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effort to respond to the hunger crisis in Vietnam.

The minute you mention Vietnam and hungry people I know that elicits an ambivalent response.

Mr. President, I introduce this concurrent resolution on behalf of Senators KENNEDY, PRESSLER, and myself calling upon the President to address the food shortage in Vietnam by exercising powers that are statutorily authorized for such disaster situations.

What I am suggesting is that U.S. food relief could well lay the foundation for the final resolution of that humanitarian issue and the related humanitarian issues of Amerasian children, of the reeducation camp prisoners, and those issues that have been identified that have to be resolved in addition to our dealing with the Vietnamese Government in relation to their invasion and occupation of Cambodia, which is threatening, of course, all of Asia, and which is of great concern to our ally and long-time friend Thailand. In other words, we could be motivated by humanitarian impulses to meet the needs of starving people and if that does not appeal to the humanitarian instinct, then let us look at the geopolitics. It could lay the foundation indeed for the resumption of political relationships with Vietnam which in turn could resolve the MIA-POW problems which in turn could help resolve the Cambodian issue, which in turn would be stopping the source of the refugee problem that we have to wrestle with here year in and year out.

So there is the geopolitical approach.

But my view is that by sending food to Vietnam, we could embark upon a new foreign policy that can bear results. We are now at a point where I think we have to create new foreign policy as it relates to Southeast Asia and we can seize this opportunity or we can continue to ignore it.

Mr. President, in another week the United Nations will complete its assessment of this famine situation, but I think we should be preparing to embark upon this kind of relief to the Vietnamese people, notwithstanding the wrongness of their political ideology as we view it, or the wrongness of their invasion in Cambodia, which I thoroughly condemn.

But this is a people problem, and perhaps in addressing the people problem, we can at the same time lay a better foundation to resolve our political problems.

I yield the floor.

Mr. KENNEDY. Mr. President, I am pleased to join in supporting Senator HATFIELD's concurrent resolution in support of emergency food assistance to the people of Vietnam.

It is one of the hallmarks of American tradition that we reach out to assist people facing famine or grave shortages of food wherever they may be and whatever government they may be under. Our humanitarian as-

sistance has always been just that—a reflection of the humane concerns of the American people.

It should be so today.

The people of Vietnam are facing a food shortage of tremendous proportions, and I believe the United States should join the international community in providing emergency food assistance to avert a possible famine.

For the past 2 years, Vietnam has suffered an unusual sequence of drought, damaging typhoons, and insect infestations that have destroyed much of the country's crop. Vietnamese government officials suggest that some 7 million of the country's population are short of food and are near starvation in some areas.

U.N. officials estimate that as much as one-third of this season's crop may be lost. There is likely to be a 1.5 million ton food deficit this year alone.

As one U.N. official recently explained, "that means that the average Vietnamese will receive only 70 percent of a normal diet of rice—even less than that in the north," which is most severely affected by the food shortages.

Mr. President, all of us in the Senate have profound differences with the Hanoi government. These should not—and cannot—be brushed aside. Vietnam today is among the very poorest countries in the world, and a large measure of the blame lies with that government.

But whatever our particular views are on those policies, it is important, Mr. President, as I said at the outset, that we not lose sight of the American tradition of assisting those in need around the world.

This tradition was illustrated by our response to famine conditions in Ethiopia in 1984. At that time, the President and the American people put aside their objections to the policies of the government in Addis Ababa to assist the people in the countryside.

We should do the same today for the people of Vietnam. We are already beginning to see the first stages of the famine conditions there. Not only are people in Vietnam experiencing untold suffering, but just as with other famines, Vietnamese are also beginning to migrate abroad in search of food. These new food refugees are now appearing in boats in Hong Kong, Thailand, and other parts of Southeast Asia.

It's clearly time to move ahead to avert further disaster for the Vietnamese people, and to stem this new flow of refugees from hunger. I would urge Senators to join in support of this responsive and most responsible concurrent resolution.

Mr. HATFIELD. Mr. President, I understand I have to ask unanimous consent to submit the concurrent resolution for referral as if in legislative session, and I so request.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The concurrent resolution is as follows:

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Whereas Vietnam is experiencing severe food shortages that have led to hunger in many provinces;

Whereas, according to international aid organizations, as many as three million Vietnamese civilians face critical food shortages;

Whereas concerned United Nations organizations already have confirmed the authenticity of these food shortages and currently are in the process of conducting independent surveys to evaluate the extent of the hunger problem;

Whereas many refugees departing by boat from Vietnam and arriving in Thailand, Hong Kong, Malaysia, and other countries of first asylum in the region are citing fears of food shortages as a factor in their decisions to flee;

Whereas these journeys by sea expose the refugees to the dangers of pirate attacks, boat ramming, pushbacks, and drownings due to vessel failure; and

Whereas the sharp increase in refugee arrivals in Hong Kong and Malaysia, and the frequent instances of pushbacks off the eastern and southern coasts of Thailand, endanger first asylum for all refugees of the region: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the President should exercise his authority to provide international disaster assistance under chapter 9 of part I of the Foreign Assistance Act of 1961 in order to respond promptly and compassionately, in cooperation with international organizations and private and voluntary organizations, to the urgent need for food assistance by those civilians in Vietnam affected by food shortages.

EXECUTIVE SESSION—TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE ELIMINATION OF THEIR INTERMEDIATE-RANGE AND SHORTER-RANGE MISSILES—THE INF TREATY

THE ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now go into executive session and resume consideration of Executive Calendar No. 9, which the clerk will report.

The assistant legislative clerk read as follows:

Calendar No. 9, Treaty Document No. 100-11, Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles.

The Senate resumed consideration of the treaty.

Pending: Byrd Amendment No. 2296, to the committee condition, to establish common understanding that the Senate's advise and consent to ratification of the INF Treaty is subject to the condition that the President shall implement and interpret the Treaty in accordance with the common understanding of the Treaty shared by the President and the Senate.

Mr. WARNER. Mr. President, momentarily the chairman of the Armed Services Committee and the distin-

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ians affected by inadequate food supplies. It is no secret that the United States Government has no diplomatic relationship with the Socialist Republic of Vietnam, and we will not normalize relations with Vietnam until the POW-MIA matter is resolved and the Vietnamese Army withdraws from Cambodia. Let me point out that there are about 2,400 persons who fought in Vietnam for whom there still is no accounting, and while two-thirds of these cases involved service personnel who were considered lost at sea or presumed dead at war's end, we must move quickly for the fullest possible accounting of these brave Americans.

But today, I turn to the immediate question of whether the United States should respond to the food shortages afflicting millions of Vietnamese men, women, and children.

The concurrent resolution which I am introducing today along with Senator KENNEDY and Senator PRESSLER answers that question affirmatively, in a manner consistent with the lessons of American history and our best humanitarian impulses to feed the hungry as a means of waging peace.

Some very compelling parallels can be drawn between the current crisis in Vietnam and the period from 1921-23 when tens of millions of Soviet citizens were facing what the League of Nations at that time termed the worst famine in the history of Europe. The Soviets then were considered an unfriendly, hostile regime and the United States had no diplomatic relationship with them. Interestingly, the Soviets were actually holding at that time Americans involved in World War I. The United States thought it had 20 Americans imprisoned, but later we discovered over 100 had seen holed up in Soviet dungeons.

It would be no exaggeration, particularly when you consider the "red scare" tactics of the preceding Wilson administration, to say that the Soviet Government was every bit the anathema then that the Vietnam Government is today.

There was a great debate within U.S. governmental circles in those days about whether or not the United States should provide food to the starving Soviet citizens, and in so doing, provide a boost to the Bolshevik regime.

To this question, the Secretary of Commerce Herbert Hoover responded without hesitation—he arranged for the American Relief Administration to send in 540,000 tons of food, which sustained 10 million people over 2 years, and saved so many lives. Incidentally, Congress was no silent bystander. It appropriated funds for this relief program, and with the President's Executive order designating Secretary Hoover as the manager of the program, the American Government was on record in support of this daring humanitarian initiative.

Mr. President, the United States can take pride today in this enlightened

endeavor that looked beyond ideologies to the unmet human needs of suffering people. I believe the United States can apply this great precedent to the more than 1 million children in Vietnam under the age of 5 who are facing "serious food shortages," as reported by the U.N. Development Program. But unfortunately, some officials in the administration are counseling the President to ignore the emergency, to look the other way, and in fact to not even talk to Vietnam about the problem. They point instead to the occupation of Cambodia and refuse to become involved in the negotiated settlement process.

Mr. President, as we debate the INF Treaty, and I will address that topic in some detail at a later time, I want to make one observation: If we had chosen not to speak to the Soviets until they had pulled out of Afghanistan, we would have not treaty before us today and no possibility for future arms control agreements.

Mr. President, what we see emerging is a diplomatic double standard. While the United States is willing to talk with the Soviet Government on a range of important arms control and foreign policy issues, the United States is unwilling to talk with the Vietnamese Government about the Vietnamese occupation of Cambodia. Had the United States followed for Afghanistan the policy it is following for Cambodia, there would have been no possibility of a Soviet troop withdrawal, no possibility of the repatriation of the refugees, and no prospect of peace in that region of the world.

I condemned nearly a decade ago and I condemn now the Vietnamese occupation of Cambodia and the subjugation of the Laotian people.

But I rise today to condemn the lamentable condition of the current diplomatic situation: First, the Chinese have armed the Khmer Rouge and Pol Pot to the teeth without any opposition from the United States, making this resistance group the only viable alternative to the current government in Cambodia; second, the United States has abandoned any responsibility for being a player in the negotiations, pretending that some magic wand will emerge and disarm the Khmer Rouge at the right time and bring Prince Sihanouk to power; and finally, third, that the United States has adopted a strategy to resolve the pending humanitarian issues in dispute with Vietnam involving the most improbable logistical arrangements and low-level governmental officials.

Mr. President, one need only travel through Vietnam and Cambodia to realize that our current foreign policy is running out of gas far short of its intended goals, or as my colleague Senator PRESSLER said in Monday's New York Times, "our policy of isolation has reached the point of diminishing returns."

Now the United States faces a critical decision: Should we avert our eyes

from the hunger and suffering of the Vietnamese people? Should we allow the millions of Vietnamese civilians who are victims of their own economy and system of government to go without food and starve to death, when many of these Vietnamese were our close allies and look to the United States as their light of hope?

Mr. President, the same arguments opposing food assistance to any Communist country, which Herbert Hoover disarmed 67 years ago, are being circulated in Washington on the question of food assistance for Vietnam. And there is a school of thought which says: The Government of Vietnam must be punished for what it did in the war, and since the only tool left at our disposal is economic, we can starve them out and let them feel the pain for their military policies and poorly managed economy. The only problem with that thinking is that the Government is not suffering—the people are.

And worse, such a U.S. foreign policy cannot and should not survive, because you cannot build a lasting peace in the region on the backs of broken people and malnourished children. Our great friend Thailand, a front-line country whose security interests must be protected, is in danger because hunger is the most destabilizing force in the world, and Thailand is seeing this all too clearly as new waves of Vietnamese are seeking asylum on Thai soil. Our ASEAN friends also have a serious stake in this matter, but again, the United States can be a better friend to them by taking an active, aggressive role in the discussions taking place within the region on how each nation's independence and security can be preserved, and not by sitting back while China brokers decision after decision for us.

Mr. President, I am introducing a concurrent resolution today which calls upon the President to address the food shortages in Vietnam by exercising powers statutorily authorized for such disaster situations.

Reports from the United Nations indicate that the squeeze of this food shortage will be felt in the next few months, and so there is a time factor which must be addressed.

By sending food to Vietnam, the United States could embark upon a new foreign policy in the region that goes directly to the people. If the United States wants to pressure Vietnam to withdraw from Cambodia and cooperate with the United States on the POW-MIA and other humanitarian issues, it can best leverage this through policies which are progressive and aggressive, not passive and isolationist. And the United States can take full advantage of its continued popularity with the people of Vietnam as well as accelerate progress with the Government of Vietnam on the POW-MIA issue and the timetable for a Vietnamese withdrawal from Cambodia, by participating in the international

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guished ranking member of the Intelligence Committee and myself—Mr. BOREN is not present at this time—will be sending to the desk an amendment.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

AMENDMENT NO. 2302

Mr. WARNER. Mr. President, I send to the desk an amendment on behalf of myself and Senators NUNN, BOREN, and COHEN and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for himself, Mr. NUNN, Mr. BOREN, and Mr. COHEN, proposes an amendment numbered 2302.

At the appropriate place in the resolution of ratification insert the following:

"The advice and consent of the Senate to the ratification of the INF Treaty is further subject to the condition that in connection with the exchange of the instruments of ratification pursuant to Article XVII of the Treaty, the President shall obtain the agreement of the Union of Soviet Socialist Republics that the agreement concluded by exchange of notes in Geneva on May 12, 1988 between the United States and the Union of Soviet Socialist Republics as to the application of the Treaty to intermediate-range and shorter-range missiles flight-tested or deployed to carry or be used as weapons based on either current or future technologies and as to the related question of the definition of the term "weapon-delivery vehicle" as used in the Treaty, and the agreed minute of May 12, 1988 signed by Ambassador Maynard W. Glitman and Colonel General N. Chervov reflecting the agreement of the Parties regarding certain issues related to the Treaty, are of the same force and effect as the provisions of the Treaty."

Mr. HELMS addressed the Chair.

Mr. WARNER. Mr. President, if I might just continue for a moment, and then I will yield to the distinguished Senator from North Carolina.

As we will explain later as we address this issue, the amendment will incorporate as part of the treaty certain diplomatic notes and minutes which then become an integral part of the treaty. This will make the two items the supreme law of the land, as opposed to an executive understanding.

Mr. President, I yield to the distinguished Senator from North Carolina.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina.

AMENDMENT NO. 2303

Mr. HELMS. Mr. President, I send an amendment to the desk.

The ACTING PRESIDENT pro tempore. If the Senator would suspend for a moment, in order for a second-degree amendment to be sent forward, the time for the first-degree amendment would have to have expired.

Mr. NUNN. Mr. President, this is not going to be a problem. May I suggest the Senator go ahead and make his statement on it. I would like to make a statement on the first-degree amendment prior to actually having the

second-degree amendment pending, and perhaps we could then expedite the matter.

Mr. WARNER. Mr. President, what we intended to do was lay before the Senate the two amendments, then we will go in order of the first-degree, followed by the second-degree.

Mr. NUNN. I would think it would be logical to discuss the first-degree amendment first.

The ACTING PRESIDENT pro tempore. We can do that by unanimous consent.

Mr. HELMS. Mr. President, I ask unanimous consent.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will report the second-degree amendment.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS], proposes an amendment numbered 2303 to amendment No. 2302.

(a) After the words "as used in the Treaty," delete the word "and"; and

(b) after the words "related to the Treaty," insert the following: ", and the agreements signed on May 21, 1988 in Vienna and Moscow, respectively, correcting the site diagrams and certain technical errors in the Treaty"

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. NUNN. Mr. President, how much time is there on each amendment, if the Chair could inform the Senator.

The ACTING PRESIDENT pro tempore. Forty minutes, equally divided, on each of the two amendments.

Mr. NUNN. Mr. President, who controls the time on the Nunn-Warner amendment?

The ACTING PRESIDENT pro tempore. The sponsor of the amendment, Senator WARNER, would control time for the proponents.

Mr. WARNER. Mr. President, I suggest the distinguished chairman control the time. As far as we know at this moment, we know of no opponent, and we will carefully guard whatever rights other Senators may have.

Mr. NUNN. Mr. President, if I could inform the Senate, this really is an amendment sponsored by myself, Senator WARNER, Senator BOREN, and Senator COHEN. There are really two parts to the amendment. We will make sure that Senator BOREN and Senator COHEN have enough time on their part of the amendment.

It is my understanding, though, that we have three amendments under the time agreement, each of which has 40 minutes, and that that time is equally divided. That would mean that the first-degree amendment would really incorporate both the Boren-Cohen amendment and the Nunn-Warner amendment, which means we would have a total of 80 minutes on those two, and that we would have 40 minutes on the Helms amendment. I would not think we would need anything like that much time on any of

them but that we would be able to expedite it and yield back, I hope, the remainder of our time.

Mr. WARNER. In that light, Mr. President, I think we should urge all Senators who wish to address these amendments to come to the floor at this time, because it is the anticipation of the five sponsors of the combined amendment to yield back as much time as possible.

The ACTING PRESIDENT pro tempore. Who yield time?

Mr. NUNN. Mr. President, I yield myself such time as I may require.

Mr. President, the amendment at the desk has been submitted on behalf of myself, Senator WARNER, Senator BOREN, and Senator COHEN.

Mr. President, during the Armed Services Committee hearings on the INF treaty, a critical issue arose as to precisely which types of ground-launched missiles of INF range are covered under the treaty. At the heart of the issue lay a fundamental question: In a treaty which is intended to ban certain weapons systems, what is a "weapon-delivery vehicle"? In addition, a major issue arose in the Intelligence Committee as to certain Soviet efforts to walk away from obligations under the treaty in the area of onsite inspection.

Had these issues not been clarified prior to ratification, they could have sown the seeds for highly contentious compliance disputes with the Soviet Union in the future. I am pleased, therefore, that the administration responded in a positive fashion to the concerns expressed by the Senate and that the United States and the Soviet Union were able to reach two agreements in Geneva on May 12 resolving these matters in a satisfactory manner.

In the opinion of the sponsors of this amendment, all that remains to put this matter to rest is to ensure that the May 12 agreements have the same force and effect as the treaty itself. Our category III understanding will, if adopted by the Senate, accomplish this result.

Mr. President, in my remarks I will focus on the future INF weapons issue. Senators COHEN and BOREN will speak to the onsite inspection dispute.

I am sure that Senator WARNER will speak on one or both of these, since he is the ranking member of the Armed Services Committee and also a valued member of the Intelligence Committee.

The May 12 United States-Soviet agreement on future INF weapons in effect adds a new provision to the treaty; that is, a definition of the term "weapon-delivery vehicle" as used in the treaty. In light of all the confusion within the administration on this issue, and I assume also within the Soviet Union, I do not think it would be wise for the Senate to let this matter rest as a side agreement that is

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not formally incorporated into the treaty.

I know the Senator from North Carolina is a part of this overall effort and that he would like to see this as part of the treaty, also. I believe the Senator from North Carolina's second-degree amendment is another matter, but a similar matter, which will be incorporated if the Senate decides to pass this amendment and if the second-degree amendment is a part of this amendment.

So we are really all aiming toward putting into the treaty in a formal way matters that have been agreed to between the two parties but which now are side agreements.

I recognize that some might argue that it is not necessary for the Senate to make this side agreement an integral part of the treaty. However, the same argument could have been made with respect to the three other documents which the administration itself chose to make an integral part of the treaty, that is, the memorandum of understanding [MOU] on data, the protocol on inspections, and the protocol on elimination. As stated in article I of the treaty:

In accordance with the provisions of this Treaty which includes the Memorandum of Understanding and Protocols which form an integral part thereof.

In short, even though the administration could have argued that the MOU and the two protocols were legally binding and did not require any additional action, the administration correctly perceived that the documents were too important and too central to the integrity and effectiveness of the treaty not to be made a formal part of the treaty. I believe the same logic applies to the May 12 agreement on future INF weapons, and the May 12 agreement on verification as well. Had not these additional agreements been reached, we would not have proceeded with the floor debate.

I would also note that in 1979 the Senate Foreign Relations Committee voted unanimously, 14 to 0, for a category III understanding that would have required President Carter to have secured Soviet agreement that the numerous agreed statements and common understandings that were negotiated as part of SALT II were of the same force and effect as the provisions of the treaty. This condition was supported by a number of Senators who are still Members of this body, including Senators PELL, LUGAR, HELMS, BIDEN, GLENN, and SARBANES. It is also interesting to note, Mr. President, that the Carter administration took the position that it was unnecessary for the Senate to take any action with regard to these associated agreements—that the Senate need only ratify the treaty itself.

Mr. President, I do not think we should be surprised that this administration takes the position that no further action by the Senate is required. The executive branch never wants fur-

ther action by the Senate on matters it has negotiated if it can help it. It is instructive to remember that the Nixon administration took the position in 1972 that submission of the SALT I interim agreement on offensive weapons to the Congress for its approval was not strictly required. But we in the Senate must decide what we think is required consistent with our responsibilities under the Constitution for treaty-making.

BACKGROUND

Mr. President, we have come a long way since the future weapons issue first surfaced in the course of Armed Services Committee hearings on the treaty in January. The journey we have travelled to reach this point has not been quick or easy. We have spent countless hours in hearings and meetings discussing this question. It took several weeks for the administration to decide what its position was on the issue. Twice, the administration had to go back to the Soviets to seek a clarification of their position.

Although this process has been neither easy or quick, the treaty is much the better for the Senate's having raised this concern. The procedure we have followed to ensure that the treaty obligations in this area were clearly understood has, in my opinion, underscored the soundness of the constitutional responsibilities afforded the Senate by the Founding Fathers. The Senate was meant to act as a check and a balance against the possibility of excessive haste on the part of the executive in concluding treaties. In the case of the INF Treaty, the Senate has performed that function with distinction.

TREATY DEFINITIONS

Mr. President, to understand this issue one must begin with the relevant provisions in the treaty text. By way of background, I would explain that the INF Treaty establishes a permanent ban on all United States and Soviet intermediate-range missiles and shorter-range missiles. Both of these terms are defined in the treaty. Article II, paragraph 5 defines an "intermediate-range missile" as a GLBM or a GLCM having a range capability in excess of 1,000 kilometers but not in excess of 5,500 kilometers. Article II, paragraph 6 defines a shorter range missile as a GLBM or a GLCM having a range capability equal to or greater than 500 kilometers but not in excess of 1,000 kilometers.

GLBM and GLCM are also terms defined in the treaty. Article II, paragraph 1 states: "The term 'ground-launched ballistic missile [GLBM]' means a ground-launched ballistic missile that is a weapon-delivery vehicle." Article II, paragraph 2 states: "The term 'ground-launched cruise missile [GLCM]' means a ground-launched cruise missile that is a weapon-delivery vehicle." The treaty provides definitions of the terms "ballistic missile" and "cruise missile;" however, it does

not contain a definition of the term "weapon-delivery vehicle."

I believe that the Senator from North Carolina joins with us in believing that this is the correct way to proceed. So we have, I believe, a general understanding between the Intelligence Committee chairman and ranking member—Senators BOREN and COHEN; the Armed Services chairman and ranking member, myself and Senator WARNER—and the ranking member of the Foreign Relations Committee, Senator HELMS. I also believe that Senator PELL, the chairman of the Foreign Relations Committee, agrees with this approach.

Let me say, trying to abbreviate my remarks this morning to expedite the matter, we have come a long way since the future weapons issue first surfaced in the course of the Armed Services Committee hearings on the treaty in January. The journey we have traveled to reach this point has not been quick or easy. We have spent countless hours in hearings and meetings discussing this question. It took several weeks for the administration to decide what its position was on this issue. Twice the administration had to go back to the Soviets to seek a clarification of their position.

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The Senate was meant to act as a check and a balance against the possibility of excessive haste on the part of the executive in concluding treaties. In the case of the INF Treaty, I believe the Senate has performed that function with distinction.

APPLICABILITY OF THE DEFINITIONS TO MISSILE CATEGORIES

To determine what is and is not covered under the INF Treaty, the agreement's definitions of "intermediate-range missile," "shorter-range missile," "GLBM," and "GLCM" must be examined in relation to four general categories of ground-launched missiles of INF ranges:

- A. Nuclear-armed missiles;
- B. Conventionally-armed missiles (i.e., missiles armed with traditional types of nonnuclear warheads, such as warheads filled with chemical explosives or chemical warfare agents);
- C. Futuristic or exotic types of nonnuclear missile weapons (e.g., missiles armed with a laser kill device or a microwave pulse generator or a missile that is designed to collide with its target (kinetic kill); and
- D. Unarmed drones and RPVs, such as missiles for surveillance, reconnaissance, communications, target designation, or any other non-weapon-delivery purpose.

These are the four categories we are talking about. The latter category that is unarmed drones, RPV's missile

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for surveillance, reconnaissance, communications, target designation or any other nonweapon delivery purpose, are not covered by this treaty. I think that is going to be a distinction that is extremely important. Not in 10 or 15 years but in the next few years and we are going to have to make sure that the Senate understands this and agrees to this overall approach.

CATEGORY A: NUCLEAR-ARMED MISSILES

There is no question that current and future "intermediate- and shorter-range missiles" armed with nuclear warheads are banned by the INF Treaty and that both parties consider themselves bound by this prohibition. From the outset of the negotiations, both sides agreed that the treaty would apply to nuclear-armed GLCM's and GLBM's of INF range.

The second category, which I have labeled category B, conventionally armed missiles.

We debated that question yesterday, the Senator from South Carolina felt strongly that these conventionally armed missiles should not be banned but they are banned. There is no question about that. We reiterated that yesterday by the vote on the floor of the Senate where we turned down the proposal to allow conventionally armed missiles. There is just no question that current and future intermediate and short-range missiles armed with nonnuclear or conventional warheads—for example warheads filled with high-energy explosives or chemical warfare agents, are banned by the treaty and that both sides consider themselves to be so bound.

In this regard, the acronym "INF"—which stands for intermediate-range nuclear forces—is somewhat misleading, since the treaty eliminates conventional as well as nuclear GLCM's and GLBM's of INF range. In fact, the INF Treaty could be described as the first conventional arms control agreement between the superpowers in the post-war era.

Unlike category A, the United States did not agree to the Soviet position that the treaty would apply to conventionally armed GLCM's and GLBM's of INF range until President Reagan decided late in the negotiations (September 1987). The administration's rationale for this decision is discussed in the Armed Services Committee report on the treaty.

CATEGORY C: FUTURISTIC MISSILE WEAPONS

In contrast to the ultimate U.S. decision to agree to ban conventionally armed GLCM's and GLBM's of INF ranges—which followed a protracted and hard-fought debate within the administration—the implications of this decision for potential types of futuristic or exotic non-nuclear-armed GLCM's and GLBM's of INF range appears to have received little, if any, high-level policy review prior to the Senate hearings on the treaty.

In response to a letter from Senator WYATT, former Secretary Weinberger and former ACDA Director Adelman

recently wrote letters denying that there was any understanding within the administration that the treaty would apply to futuristic systems (attachments 2 and 3). This contention was disputed by administration officials during an April 14 Armed Services Committee hearing.

For example, General Herres, Vice Chairman of the Joint Chiefs of Staff, testified:

I would just have to say, with all due respect, Mr. Weinberger has to be mistaken. You know, if weapons based on future technologies had been meant for exclusion . . . there would have to be some record or some documentation which defines the scope of that exclusion. I do not know of one shred of documentation anywhere. I have never heard any discussion in all of these deliberations that at any time ever suggested that there was any intent of defining the scope of some exclusion that would facilitate the use of future technologies for weapons using these platforms.

At this hearing, Ambassador Woodworth, the deputy chief INF negotiator, conceded that "at the time of that decision, which is what he (Mr. Weinberger) was addressing, we had not explicitly discussed futures, and I think that is what he was reflecting." Ambassador Woodworth went on to say, however, that "we have looked at this issue in OSD, as we have in the entire administration, and we have reached a conclusion about what we think the logic of the record and the treaty means, and it is difficult to reach any other conclusion." In this regard, Ambassador Woodworth testified, "it appears he (Mr. Weinberger) does not agree with the position we have taken."

Whatever the degree of understanding at the time the decision was made to ban conventionally armed GLCM's, the question which arose during our hearings was what is the effect of the treaty which the Senate is now being asked to approve. As Ambassador Glitman testified on April 14 with regard to the Weinberger and Adelman letters:

. . . it is not a question of who is telling the truth. It seems to me it is a question of what does the Treaty do and what does it not do.

The question of whether potential types of nonnuclear GLCM's and GLBM's of INF ranges that would carry or be employed as futuristic or exotic weapons are covered under the treaty bears directly on the definition of "weapon-delivery vehicle." The treaty clearly specifies that any cruise or ballistic missile of INF range that is ground-launched is banned if it is a "weapon-delivery vehicle." By implication, any cruise or ballistic missile of INF range that is ground-launched and is not a "weapon-delivery vehicle" is permitted. As will be noted, this differentiation also relates directly to the determination of which types of missiles qualify as permitted category D missiles; that is, unarmed drones or RPV's used for "non-weapon-deliver"

purposes, such as surveillance or reconnaissance.

Although the treaty does not contain a definition of "weapon-delivery vehicle," the article-by-article analysis of the treaty submitted by Secretary Shultz stated that this term meant "those types of (GLCM's and GLBM's) that have been . . . flight-tested or deployed with any type of warhead device or simulation thereof." This suggested that any GLCM or GLBM which did not carry a warhead was excluded. Put differently, this suggested that GLCM's or GLBM's of INF range which attacked their targets through more exotic means (such as a laser, a microwave pulse generator or direct impact (kinetic kill)) were not covered.

During hearings on March 18 and 24, the administration testified to the Armed Services Committee that it could not say what its position was on this key definitional issue or in response to specific questions about which types of future or "exotic" technology systems were banned by the treaty. Finally, Ambassador Glitman appeared before the Foreign Relations Committee on March 30 and announced that the administration had determined that the term "weapon-delivery vehicle" meant "any INF ballistic or cruise missile system that is tested or deployed to carry a weapon—that is, any mechanism or device which when directed against a target is designed to damage or destroy it." Since this definition incorporated means of damage or destruction other than warheads, it constituted a more inclusive definition than that contained in the article-by-article analysis.

CATEGORY D: UNARMED DRONES AND RPV'S

Any cruise or ballistic missile of INF range that is ground-launched and that is not covered by the administration's definition is necessarily encompassed under category D. In other words, if a cruise or ballistic missile of INF range that is ground-launched does not carry a "mechanism or device which when directed against a target is designed to damage or destroy it," then it is permitted under the treaty.

After the administration determined its position on the definitional issue, executive branch witnesses discussed the implications of the definition with reference to specific types of future weapons which would and would not be covered by this definition. Based on this testimony and additional consultations with the administration, it is the understanding and intent of the sponsors of this amendment what the following represents an illustrative list of potential RPV/drone mission areas which the United States regards as "non-weapon-delivery" missions for purposes of treaty interpretation:

I emphasize this list is an illustration. It is not intended to envision every possibility of excluded weapons, but it is illustrative of those missions

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that we believe are not weapon-delivery missions:

Surveillance, reconnaissance, target simulation, communications relay, signals intelligence, such as electronics eavesdropping; decoying, psychological warfare activities, such as leaflet dropping, weather data gathering, bomb damage assessment, target designation, electronic countermeasures [ECM] and other electronic warfare activities, such as radar jamming and chaff dispensing.

Mr. President, those are items which we feel strongly about, after going through this in detail and developing with the administration and the administration with the Soviet Union this definition which had not been covered in the original treaty as submitted.

We feel that these items are excluded, meaning the United States or the Soviet Union will be able to develop these type of devices without breaching the treaty that we have before us.

NEGOTIATING HISTORY

Mr. President, the administration conceded that at no point in the negotiations did the two parties specifically discuss INF missiles using future technologies and that the parties never specifically addressed the meaning of the term "weapons-delivery vehicle" or its application to the four categories which I have outlined. The administration contended that this omission was not an oversight per se, but rather reflected a general policy of the two sides that it would not be necessary to negotiate the meaning of "ordinary, commonly understood" words.

Nonetheless, the administration did point to several U.S. memorandums of conversations [memcons] with the Soviet side during the negotiations which it contends contain inferences that the Soviet Union viewed the scope of the treaty broadly, with no exemption for any type of future conventionally armed GLCM's or GLBM's. This view was challenged by some members of the Armed Services Committee during the hearings, primarily because the memcons related to negotiations on whether conventionally armed GLCM's would be prohibited under the treaty. These memcons have been provided to the Senate but remain classified.

Finally, the administration cited the Vienna Convention on the Law of Treaties as supportive of its position. Article 31 of that agreement provides that treaties "shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context."

Based on these arguments, the administration asserted that no clarification of the Soviet position on this issue was technically required since the administration believes that a common understanding has already been established. As stated in Secretary Shultz' letter to Senator DOLE of April 20:

The Administration has concluded that the INF negotiating record, viewed in conjunction with the Treaty text and with customary international law and the Vienna Convention on the Law of Treaties, demonstrate that the United States and the Soviet Union share a common understanding that all U.S. or Soviet ground-launched missiles with ranges between 500-5500 kilometers, both present and future, should be subject to the provisions of the INF Treaty.

According to Secretary Shultz, it is also the "considered judgment" of the administration that "the parties understand the term 'weapon-delivery vehicle' to mean any INF ballistic or cruise missile system that is tested or deployed to carry a weapon—that is, any mechanism or device which when directed against a target is designed to damage or destroy it;" that is, the same definition which Ambassador Glitman presented on March 30.

RECENT DIPLOMATIC INITIATIVES

Although the administration had stated that no clarification was technically required, Secretary Shultz elected to raise the future weapons question with Mr. Shevardnadze on the occasion of their April 14 meeting in Geneva to sign the U.N. convention on Afghanistan. On April 15, the Soviet Ambassador in Washington delivered a letter to the Secretary from the Foreign Minister which commented on their discussion in Geneva.

Unfortunately, the letter raised more questions about the Soviet position than it answered. Compounding the problem was the fact that the Senate was provided two versions of the letter which differ in key respects. The first was an "unofficial" English-language translation of the original Russian text prepared by the Soviet Government that was sent by Ambassador Kampelman to Senator PELL on April 18. The second was an "official" State Department translation sent by Secretary Shultz to Senator DOLE on April 20.

There were several problems with the April 15 Shevardnadze letter. For example, the first translation of the letter raised a question as to whether the Soviet Union agrees that unarmored—that is, category D—missiles are exempted from the treaty. It is possible to read the phrase in the first translation of the letter "intermediate-range and shorter-range missiles, however equipped" as including surveillance drones or RPV's and other non-weapons-equipped missiles. In the second, official translation, the phrase "however equipped" was changed to read "however armed." The State Department explained that the Russian word in question could be translated both as "armed" and "equipped" but that during the INF negotiations it was standard practice to translate it as "armed."

Second, in both translations, the letter referred only to missiles which are equipped with "warheads." This is significant since, as previously noted, this issue first arose, in part, because the article-by-article analysis appeared

to indicate that only those INF missiles equipped with "warheads" were covered.

Furthermore, the letter failed to provide an explicit assurance that the Soviet Union agrees with the administration's contention that the parties understand the term "weapon-delivery vehicle" to mean "any INF missile which carries a weapon; that is, any mechanism or device which, when directed against a target, is designed to damage or destroy it."

Recognizing that many Senators were dissatisfied with the April 15 Shevardnadze letter, the administration initiated an exchange of diplomatic notes with the Soviet Union during the recent ministerial meetings in Geneva. These letters, dated May 12 and signed by Ambassador Kampelman and Ambassador Karpov, respectively, confirm the parties' understanding as to the definition of "weapon-delivery vehicle" and the applicability of the treaty to future INF weapons.

As stated in the May 12 diplomatic note of the Soviet Union to the United States, the Soviet Union confirmed that it "is in full accord with the text and contents of the note of the Government of the United States of America," including the statement in the United States note that the definition of "weapon-delivery vehicle" is "any ground-launched ballistic or cruise missile in the 500-kilometer to 5,500-kilometer range that has been flight-tested or deployed to carry or be used as a weapon—that is, any warhead, mechanism or device, which, when directed against any target, is designed to damage or destroy it." This final version of the definition incorporated several modifications suggested by the Armed Services Committee but remains fully consistent with the text of the definition presented by Ambassador Glitman on March 30.

Mr. President, I ask unanimous consent that the United States and Soviet diplomatic notes of May 12 and the May 12 agreement on onsite inspection issues be inserted in the Record at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. NUNN. Mr. President, I believe, in conclusion, that these agreements with the Soviet Union must be incorporated into the treaty and given the same weight and stature as the existing MOU on data and the protocols on elimination and inspection.

Mr. President, the Category III understanding to the resolution of ratification which we are proposing requires that, as a condition for entering the treaty into force, the President must obtain a formal and binding assurance from the Soviet Union that the May 12 exchange of notes and the verification agreement have the same force and effect as the treaty. Such a

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assurance would have to be secured through a procedure that would leave no doubt as to the explicit agreement of the Soviet Union to the Senate understanding.

The protocol of exchange of instruments of ratification is the normal vehicle for recording such clarifications. It is this document which both parties sign at the time they exchange their respective instruments of ratification which specifies the effect each party gives to any conditions contained in the instrument of ratification of the other party.

I certainly do not see this as a "killer" amendment or as a requirement which will delay the treaty in any respect. In a May 13 letter to Senators BOREN, WARNER, COHEN, and me, General Powell, the National Security Adviser, stated that the May 12 letters:

Constitute a mutual and binding commitment on both the United States and the Soviet Union which has the same force and effect under international law as the provisions of the treaty itself.

So there is no disagreement as to the substance of this condition between the White House and the sponsors of the amendment.

Furthermore, the Soviet Union has already indicated that it shares a common understanding with the United States on these issues, thus there should be no problem with asking the Soviet Government to confirm that the two parties' agreement on these issues have the same force and effect as the provisions of the treaty. Such a confirmation would only require one additional sentence in the protocol of exchange and could be accomplished in a matter of minutes.

EXHIBIT 1

NOTE OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA TO THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS

In light of the discussions between the Secretary of State of the United States of America and the Foreign Minister of the Union of Soviet Socialist Republics in Geneva and Moscow on April 14 and April 21-22, 1988, and the Foreign Minister's letter to the Secretary of State, dated April 15, 1988, the Government of the United States of America wished to record in an agreement concluded by exchange of notes the common understanding reached between the two Governments as to the application of the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-range and Shorter-range Missiles (hereinafter referred to as "the Treaty"), signed at Washington on December 8, 1987, to intermediate-range and shorter-range missiles flight-tested or deployed to carry weapons based on either current or future technologies and as to the related question of the definition of the term "weapon-delivery vehicle" as used in the Treaty.

It is the position of the Government of the United States of America that the Parties share a common understanding that all their intermediate-range and shorter-range missiles as defined by the Treaty, both at present and in the future, are subject to the provisions of the Treaty.

In this connection, it is also the position of the Government of the United States of America that the Parties share a common understanding that the term "weapon-delivery vehicle" in the Treaty means any ground-launched ballistic or cruise missile in the 500 kilometer to 5500 kilometer range that has been flight-tested or deployed to carry or be used as a weapon—that is, any warhead, mechanism or device, which, when directed against any target, is designed to damage or destroy it. Therefore, the Treaty requires elimination and bans production and flight-testing of all such missiles tested or deployed to carry or be used as weapons based on either current or future technologies, with the exception of missiles mentioned in paragraph 3 of Article VII of the Treaty. It is also the position of the Government of the United States of America that the Parties share a common understanding that the Treaty does not cover non-weapon-delivery vehicles.

It is the understanding of the Government of the United States of America that the above reflects the common view of the two Governments on these matters. If so, the Government of the United States of America proposes that this note and the Soviet reply note confirming that the Government of the Union of Soviet Socialist Republics shares the understanding of the Government of the United States of America, as set forth above, shall constitute an agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics.

NOTE OF THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS TO THE GOVERNMENT OF THE UNITED STATES OF AMERICA

The Government of the Union of Soviet Socialist Republics acknowledges receipt of the note of the Government of the United States of America of May 12, 1988, as follows:

"In light of the discussions between the Secretary of State of the United States of America and the Foreign Minister of the Union of Soviet Socialist Republics in Geneva and Moscow on April 14 and April 21-22, 1988, and the Foreign Minister's letter to the Secretary of State, dated April 15, 1988, the Government of the United States of America wished to record in an agreement concluded by exchange of notes the common understanding reached between the two Governments as to the application of the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-range and Shorter-range Missiles (hereinafter referred to as 'the Treaty'), signed at Washington on December 8, 1987, to intermediate-range and shorter-range missiles flight-tested or deployed to carry weapons based on either current or future technologies and as to the related question of the definition of the term 'weapon-delivery vehicle' as used in the Treaty.

"It is the position of the Government of the United States of America that the Parties share a common understanding that all their intermediate-range and shorter-range missiles as defined by the Treaty, both at present and in the future, are subject to the provisions of the Treaty.

"In this connection, it is also the position of the Government of the United States of America that the Parties share a common understanding that the term 'weapon-delivery vehicle' in the Treaty means any ground-launched ballistic or cruise missile in the 500 kilometer to 5500 kilometer range

that has been flight-tested or deployed to carry or be used as a weapon—that is, any warhead, mechanism or device, which, when directed against any target, is designed to damage or destroy it. Therefore, the Treaty requires elimination and bans production and flight-testing of all such missiles tested or deployed to carry or be used as weapons based on either current or future technologies, with the exception of missiles mentioned in paragraph 3 of Article VII of the Treaty. It is also the position of the Government of the United States of America that the Parties share a common understanding that the Treaty does not cover non-weapon-delivery vehicles.

"It is the understanding of the Government of the United States of America that the above reflects the common view of the two Governments on these matters. If so, the Government of the United States of America proposes that this note and the Soviet reply note confirming that the Government of the Union of Soviet Socialist Republics shares the understanding of the Government of the United States of America, as set forth above, shall constitute an agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics."

The Government of the Union of Soviet Socialist Republics states that it is in full accord with the text and contents of the note of the Government of the United States of America as quoted above and fully shares the understanding of the Government of the United States of America set forth in the above note.

The Government of the Union of Soviet Socialist Republics agrees that the note of the Government of the United States of America of May 12, 1988, and this note in reply thereto, constitute an agreement between the Government of the Union of Soviet Socialist Republics and the Government of the United States of America that the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-range and Shorter-range Missiles is applicable to intermediate-range and shorter-range missiles flight-tested or deployed to carry weapons based on either current or future technologies, and also regarding the related question of the definition of the term "weapon-delivery vehicle" as used in the Treaty.

GENEVA, May 12, 1988.

Representatives of the United States of America and the Union of Soviet Socialist Republics discussed the following issues related to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles, signed in Washington on 8 December, 1987, during the meeting between Secretary Shultz and Foreign Minister Shevardnadze in Geneva on 11-12 May 1988. As a result of these discussions, the Parties agreed on the points that follow.

1. In accordance with paragraph 7 of Section VII of the Inspection Protocol, during baseline, close-out and short-notice inspections, the Parties will be inspecting the entire inspection site, including the interior of structures, containers or vehicles, or including covered objects, capable of containing: for the United States—the second stage of the Pershing II, and the BGM-109G cruise missile; for the USSR—the first stage of the SS-12 missile, the stage of the SS-23 missile, the SSC-X-4 cruise missile and the SS-4 launch stand.

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2. Regarding the second stages of United States GLBMs, the aggregate numbers of these stages are listed in the Memorandum of Understanding and will be updated in accordance with Article IX of the Treaty no later than 30 days after entry into force of the Treaty and at six-month intervals thereafter. Except in the case of close-out inspections and inspections of formerly declared facilities, the United States in-country escort is obliged to provide the Soviet inspection team leader with the number of such second stages at the inspection site as well as a diagram of the inspection site indicating the location of those stages. Finally, as set forth in the Elimination Protocol, Soviet inspectors will observe the elimination of all the stages of United States GLBMs.

3. The entire area of an inspection site, including all buildings, within the outer boundaries depicted on the site diagrams are subject to inspection. In addition, anything depicted outside these outer boundaries on the site diagrams is subject to inspection. Any technical corrections to the site diagrams appended to the Memorandum of Understanding will be made via the corrigendum exchange of notes prior to entry into force of the Treaty. Such corrections will not involve the exclusion of the buildings, structures or roads within or depicted outside the outer boundaries depicted on the site diagrams currently appended to the Memorandum of Understanding.

4. The Soviet side assured the United States side that, during the period of continuous monitoring of facilities under the Treaty, no shipment shall exit a continuous monitoring facility on the territory of the USSR whose dimensions are equal to or greater than the dimensions of the SS-20 missile without its front section but less than the dimensions of an SS-20 launch canister, as those dimensions are listed in the Memorandum of Understanding. For the purposes of this assurance, the length of the SS-20 missile without its front section will be considered to be 14.00 meters. In the context of this assurance, the United States side will not be inspecting any shipment whose dimensions are less than those of an SS-20 launch canister, as listed in the Memorandum of Understanding.

5. Inspection teams may bring to the inspection site the equipment provided for in the Inspection Protocol. Use of such equipment will be implemented in accordance with the procedures set forth in that Protocol. For example, if the inspecting Party believes that an ambiguity has not been removed, upon request the inspected Party shall take a photograph of the object or building about which a question remains.

6. During baseline inspections, the Parties will have the opportunity, on a one-time basis, to verify the technical characteristics listed in Section VI of the Memorandum of Understanding, including the weights and dimensions of SS-20 stages, at an elimination facility. Inspectors will select at random one of each type of item to weigh and measure from a sample presented by the inspected Party at a site designated by the inspected Party. To ensure that the items selected are indeed representative, the sample presented by the inspected Party must contain an adequate number of each item (i.e., at least 8-12, except in the case of the United States Pershing IA launcher, only one of which exists).

7. Immediately prior to the initiation of elimination procedures, an inspector shall confirm and record the type and number of items of missile systems which are to be eliminated. If the inspecting Party deems it necessary, this shall include a visual inspection of the contents of launch canisters.

This visual inspection can include looking into the launch canister once it is opened at both ends. It can also include use of the equipment and procedures that will be used eight times per year at Votkinsk and Magna to measure missile stages inside launch canisters (i.e., an optical or mechanical measuring device). If it should turn out, in particular situations, that the inspector is unable to confirm the missile type using the above techniques, the inspected Party is obligated to remove the inspector's doubts so that the inspector is satisfied as to the contents of the launch canister.

8. The length of the SS-23 missile stage will be changed, in a corrigendum to the Memorandum of Understanding, to 4.56 meters. The length of the SS-12 first stage will continue to be listed as 4.38 meters, which includes an interstage structure.

9. The sides will exchange additional photographs no later than May 15, 1988. For the United States side, these photographs will be of the Pershing IA missile and Pershing II missile with their front sections attached and including a scale. For the Soviet side, these photographs will be of the SS-23, SS-12, and SS-4 with their front sections attached, and of the front section of the SS-20.

10. In providing notifications of transit points in accordance with paragraph 5(f)(iv) of Article IX of the Treaty, the Parties will specify such intermediate locations by providing the place-name and its center coordinates in minutes.

11. The United States side has informed the Soviet side that Davis Monthan Air Force Base, Arizona will serve as the elimination facility for the United States BGM-109G cruise missile. In order to address Soviet concerns on a related matter, the United States will formally inform the Soviet side before entry into force of the Treaty, of an elimination facility for each of its Treaty-limited items.

These points reflect the understandings of the two Parties regarding their obligations under the Treaty.

MAYNARD W. GLITMAN,

Ambassador, United States Chief Negotiator on Intermediate-Range Nuclear Forces.

N. CHERVOV,

Colonel General, Chief of Directorate General Staff of the Soviet Armed Forces.

Mr. WARNER. Mr. President, this amendment, in the judgment of the Senator from Virginia, represents some of the most constructive work done by the Senate on this treaty. And it was done in what I call a complete spirit of consultation with the President, the Secretary of State, the National Security Adviser, and others who have from time to time met with us as a group and defined the framework of the area. We believe this was necessary and had to be corrected as a consequence of our hearings. There were certain informal exchanges of letters which led to the eventual exchange of formal diplomatic notes between the United States and the Soviet Union. Those notes, Mr. President, are incorporated by reference under this amendment, and become an integral part of the treaty.

The chairman of the Armed Services Committee, Mr. NUNN, addressed in some detail as to how the issue of the futuristic systems arose in the context

of the hearings of the Senate Armed Services Committee. On September 17, 1987, the President made the decision to include in a general category the conventional ballistic and cruise missiles under the terms of the treaty. The record, in the judgment of the Senate, did not fully cover the types of weapons in the conventional area. That oversight led to the exchange of notes which stand before us today making it very clear the categories of weapons that would be included under the treaty.

We want to also make clear, and the Senator from Georgia has touched on this, and I think the distinguished Senator from Indiana will soon address this subject, that the INF missiles with an electronic warfare payload which do not damage or destroy a target are permitted by this treaty. That is a very important category of weaponry that in the future I am sure this Nation may or will develop.

We also learned from the chairman in his statement that certain weapons systems which incorporate lasers, microwaves, directed energy, and kinetic kill systems are included in this category of prohibited weapons under the treaty. These are typical technologies that when developed to damage or destroy a target are considered a weapon delivery system. Finally, I would like to inform the Senate that anyone interested in reading the history of the INF future weapons issue should refer to a report written by Senator NUNN and myself. This details how this issue surfaced, debated, and was subsequently resolved. The report is an unclassified addendum that we submitted to this SSCI report on future INF weapons.

I ask unanimous consent that the report be printed in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

ADDENDUM TO SSCI REPORT ON FUTURE INF WEAPONS SUBMITTED BY SENATORS NUNN AND WARNER

BACKGROUND OF THE FUTURE INF WEAPONS ISSUE

During the Armed Services Committee hearings on the INF Treaty, a critical issue arose as to precisely which types of ground-launched missiles of INF range are covered under the Treaty. Unless clarified prior to ratification, this ambiguity could sow the seeds for highly contentious compliance disputes with the Soviet Union in the future. At the heart of this issue lies a fundamental question: in a Treaty which is intended to ban certain weapon systems, what is a "weapon-delivery vehicle"?

TREATY DEFINITIONS

The INF Treaty establishes a permanent ban on all U.S. and Soviet "intermediate-range missiles" and "shorter-range missiles." Both of these terms are defined in the Treaty. Article II, Paragraph 5 defines an "intermediate-range missile" as "a GLBM or a GLCM having a range capability in excess of 1000 kilometers but not in excess of 5500 kilometers." Article II, Paragraph 6 defines a "shorter-range missile" as "a GLBM or a GLCM having a range cap-

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bility equal to or greater than 500 kilometers but not in excess of 1000 kilometers."

GLBM and GLCM are also terms defined in the Treaty. Article II, Paragraph 1 states: "The term 'ground-launched ballistic missile (GLBM)' means a ground-launched ballistic missile that is a weapon-delivery vehicle." Article II, Paragraph 2 states: "The term 'ground-launched cruise missile (GLCM)' means a ground-launched cruise missile that is a weapon-delivery vehicle." The Treaty provides definitions of the terms "ballistic missile" and "cruise missile;" however, it does not contain a definition of the term "weapon-delivery vehicle."

In point of fact, the term "weapon-delivery vehicle" is not original to the INF Treaty. Rather, this term appears to have been carried over from the SALT II Treaty, where it was used in a definition of cruise missile. Article II, Paragraph 8 of SALT II defines cruise missiles as "unmanned, self-propelled, guided *weapon-delivery vehicles* which sustain flight through the use of aerodynamic lift over most of their flight path..." (emphasis added.) The INF Treaty defines a cruise missile as an "unmanned, self-propelled vehicle that sustains flight through the use of aerodynamic lift over most of its flight path" and defines a GLCM as a "ground-launched cruise missiles that is a weapon-delivery vehicle."

Although the SALT II Treaty did not contain a definition of "weapon-delivery vehicle," it does include a definition of what is not a "weapon-delivery vehicle." The Third Common Understanding to Article II, Paragraph 8 reads:

Unmanned, self-propelled, guided vehicles which sustain flight through the use of aerodynamic lift over most of their flight path and are not *weapon-delivery vehicles*, that is *unarmed, pilotless, guided vehicles*, shall not be considered to be cruise missiles if such vehicles are distinguishable from cruise missiles on the basis of externally observable design features. (Emphasis added.)

A review of Senate hearings in 1979 on the SALT II Treaty reveals no instance in which Carter Administration officials addressed the meaning of the terms "weapon-delivery vehicle" and "unarmed." However, discussions with former SALT II negotiators indicate that in late December 1978, the Soviet Union unexpectedly claimed that all types of remotely-piloted vehicles (RPVs), included unarmed RPVs, would be covered under the SALT II Treaty. The RPV issue was successfully resolved during negotiations in January and February of 1979, with the Soviet Union agreeing that "unarmed, pilotless, guided vehicles" would be excluded from the agreement provided they were equipped with so-called "externally observable differences (EODs)."

During this period, the two-SALT II delegations apparently made some references to specific RPV mission areas which would be exempt, including surveillance and communications. At the recommendation of the Armed Services Committee, the Arms Control and Disarmament Agency (ACDA) will review the SALT II negotiating history to determine whether the Soviet Union and the United States reached a common understanding during these discussions on RPVs designed for missions other than recommendations and communications that would also be considered by the two sides not to be "weapon-delivery vehicles."

APPLICABILITY OF THE DEFINITIONS TO MISSILE CATEGORIES

To determine what is and is not covered under the INF Treaty, the agreement's definitions of "intermediate-range missile," "shorter-range missile," "GLBM," and "GLCM" must be examined in relation to

four general categories of ground-launched missiles of INF ranges:

- A. Nuclear-armed missiles;
- B. Conventionally-armed missiles (i.e., missiles armed with traditional types of non-nuclear warheads, such as warheads filled with chemical explosives or chemical warfare agents);
- C. Futuristic or exotic types of non-nuclear missile weapons (e.g., missiles armed with a laser kill device or a microwave pulse generator or a missile that is designed to collide with its target (kinetic kill); and
- D. Unarmed drones and RPVs, such as missiles for surveillance, reconnaissance, communications, and target designation, or for any other non-weapon-delivery purpose.

CATEGORY A: NUCLEAR-ARMED MISSILES

There is no question that current and future "intermediate- and shorter-range missiles" armed with nuclear warheads are banned by the INF Treaty and that both Parties consider themselves bound by this prohibition. From the outset of the negotiations, both sides agreed that the Treaty would apply to nuclear-armed GLCMs and GLBMs of INF range.

CATEGORY B: CONVENTIONALLY-ARMED MISSILES

There is also no question that current and future "intermediate- and shorter-range missiles" armed with non-nuclear, or "conventional," warheads (for example, warheads filled with high energy explosives or chemical warfare agents) are banned by the Treaty and that both sides consider themselves to be so bound. In this regard, the acronym "INF" (which stands for Intermediate-range Nuclear Forces) is somewhat misleading, since the Treaty eliminates conventional as well as nuclear GLCMs and GLBMs of INF range. In fact, the INF Treaty could be described as the first conventional arms control agreement between the superpowers in the post-war era.

In contrast to Category A, the United States did not agree to the Soviet position that the Treaty would apply to conventionally-armed GLCMs and GLBMs of INF range until late in the negotiations (September 1987). The Administration's rationale for this decision is discussed in the Armed Services Committee report on the Treaty.

CATEGORY C: FUTURISTIC MISSILE WEAPONS

In contrast to the ultimate U.S. decision to agree to ban conventionally armed GLCMs and GLBMs of INF ranges—which followed a protracted and hard-fought debate within the Administration—the implications of this decision for potential types of futuristic or exotic non-nuclear-armed GLCMs and GLBMs of INF range appears to have received little, if any, high-level policy review prior to the Senate hearings on the Treaty.

In response to a recent letter from Senator Quayle (Attachment 1), former Secretary Weinberger and former ACDA Director Adelman wrote letters denying that there was any understanding within the Administration that the Treaty would apply to futuristic systems. (Attachments 2 & 3.) This contention was disputed by Administration officials during an April 14 Armed Services Committee hearing.

For example, General Herres, Vice Chairman of the Joint Chiefs of Staff, testified:

I would just have to say, with all due respect, Mr. Weinberger has to be mistaken. You know, if weapons based on future technologies had meant for exclusion... there would have to be some record or some documentation which defines the scope of that exclusion. I do not know of one shred of documentation anywhere. I have never heard any discussion in all of these deliberations that at any time ever suggested that

there was any intent of defining the scope of some exclusion that would facilitate the use of future technologies for weapons using these platforms.

At this hearing, Ambassador Woodworth, the Deputy Chief INF Negotiator, conceded that "at the time of that decision, which is what he [Mr. Weinberger] was addressing, we had not explicitly discussed futures, and I think that is what he was reflecting." General Herres agreed with the point that it was more due to assumption and inference than any explicit discussion that policy-makers would have concluded that futures were included. Ambassador Woodworth went on to say, however, that "we have looked at this issue in OSD, as we have in the entire Administration, and we have reached a conclusion about what we think the logic of the record and the Treaty means, and it is difficult to reach any other conclusion." In this regard, Ambassador Woodworth testified, "it appears he [Mr. Weinberger] does not agree with the position we have taken."

Whatever the degree of understanding at the time the decision was made to ban conventionally-armed GLCMs, the Administration now insists that the Treaty prohibits the deployment of INF missiles using future or "exotic" technologies. The question now before the Senate is what is the effect of the Treaty in this area. As Ambassador Giltman testified on April 14 with regard to the Weinberger and Adelman letters:

... it is not a question of who is telling the truth. It seems to me it is a question of what does the Treaty do and what does it not do.

The question of whether potential types of non-nuclear GLCMs and GLBMs of INF ranges that would carry or be employed as futuristic or exotic weapons are covered under the Treaty bears directly on the definition of "weapon-delivery vehicle." The Treaty clearly specifies that any cruise or ballistic missile of INF range that is ground-launched is banned if it is a "weapon-delivery vehicle." By implication, any cruise or ballistic missile of INF range that is ground-launched and is not a "weapon-delivery vehicle" is permitted. As will be noted, this differentiation also relates directly to the determination of which types of missiles qualify as permitted Category D missiles, i.e., unarmed drones or RPVs used for "non-weapon-delivery" purposes, such as surveillance or reconnaissance.

Although the Treaty does not contain a definition of "weapon-delivery vehicle," the Article-by-Article Analysis of the Treaty submitted by Secretary Shultz stated that this term meant "those types of [GLCMs and GLBMs] that have been... flight-tested or deployed with any type of warhead device or simulation thereof." (Emphasis added.) This suggests that any GLCMs or GLBMs which did not carry a warhead was excluded. Put differently, this suggests that GLCMs or GLBMs of INF range which attacked their targets through more exotic means (such as a laser, a microwave pulse generator or direct impact (kinetic kill)) were not covered.

During hearings on 18 and 24 March, the Administration testified to the Armed Services Committee that it could not say what its position was on this key definitional issue or on which specific types of future or "exotic" technology systems were banned by the Treaty. On March 30, Ambassador Giltman appeared before the Foreign Relations Committee and testified that the Administration had determined that the term "weapon-delivery vehicle" meant "any INF ballistic or cruise missile system that is tested or deployed to carry a weapon—that is, any mechanism or device which when di-

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rected against a target is designed to damage or destroy it."

That description incorporates means of damage or destruction other than warheads and thus is a more inclusive definition than that contained in the Article-by-Article Analysis. In subsequent closed hearings before the Armed Services and Foreign Relations Committees, Administration witnesses discussed the application of this definition with reference to specific types of future weapons which would and would not be covered by this definition.

CATEGORY D: UNARMED DRONES AND RPVS

Any cruise or ballistic missile of INF range that is ground-launched and that is not covered by the Administration's definition is necessarily encompassed under Category D. In other words, if a cruise or ballistic missile of INF range that is ground-launched does not carry a "mechanism or device which when directed against a target is designed to damage or destroy it," then it is permitted under the Treaty.

A list of potential RPV/drone mission areas which the United States would presumably regard as "non-weapon-delivery" missions would include: Surveillance; reconnaissance; communications relay; signals intelligence (electronics eavesdropping); decoying; leaflet dropping; chaff dispensing (radar interference); weather data gathering; bomb damage assessment; target designation; electronic countermeasures or other forms of electronic warfare.

However, since the definition of "weapon-delivery vehicle" was announced by the Administration on March 30, questions have arisen as to its meaning and its implications for RPV/drone missions areas such as those listed above. For example, what is meant by the words "Designed to damage"? Is a radar jammer or high-powered microwave generator which renders enemy electronics systems inoperable "designed to damage"? Is a laser device which "blinds" optic sensors on enemy weapons platforms "designed to damage"? What if the "damage" caused by such systems is incidental to the system's primary function? Furthermore, what is meant by "damage"? Does "damage" mean damage that is lasting unless repaired, or does it also encompass temporary interference effects which cease when the mechanism or device in question stops operating?

Answers to these questions have been provided by Administration witnesses in closed committee sessions. There is no indication, however, that any discussions at this level of detail and specificity have taken place with the Soviet Union since the Treaty was signed.

NEGOTIATING HISTORY

The Administration has conceded that at no point in the negotiations did the two Parties specifically discuss INF missiles using future technologies and that the Parties never specifically addressed the meaning of the term "weapon-delivery vehicle." The Administration contends that this omission was not an oversight per se, but rather reflects a general policy of the two sides that it would not be necessary to negotiate the meaning of "ordinary, commonly understood" words.

Nonetheless, the Administration does point to several U.S. memoranda of conversations (memcons) with the Soviet side during the negotiations which it contends contain inferences that the Soviet Union viewed the scope of the Treaty broadly, with no exemption for any type of future conventionally-armed GLCMs or GLBMs. This view was challenged by some members of the Armed Services Committee during the hearings, primarily because the memcons related to negotiations on whether con-

ventionally-armed GLCMs would be prohibited under the Treaty. These memcons have been provided to the Senate but remain classified.

Finally, the Administration cites the Vienna Convention on the Law of Treaties as supportive of its position. Article 31 of that agreement provides that treaties "shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context."

Based on these arguments, the Administration has asserted that no clarification of the Soviet position on this issue is technically required since the Administration believes that a common understanding has already been established. As stated in Secretary Shultz's letter to Senator Dole of April 20:

The Administration has concluded that the INF negotiating record, viewed in conjunction with the Treaty text and with customary international law and the Vienna Convention on the Law of Treaties, demonstrate that the United States and the Soviet Union share a common understanding that all U.S. or Soviet ground-launched missiles with ranges between 500-5,500 kilometers, both present and future, should be subject to the provisions of the INF Treaty.

According to Secretary Shultz, it is also the "considered judgment" of the Administration that "the Parties understand the term 'weapon-delivery vehicle' to mean any INF ballistic or cruise missile system that is tested or deployed to carry a weapon—that is, any mechanism or device which when directed against a target is designed to damage or destroy it," i.e., the same definition which Ambassador Glitman presented on March 30.

RECENT DIPLOMATIC INITIATIVES

Although the Administration had stated that no clarification was technically required, Secretary Shultz elected to raise the future weapons question with Mr. Shevardnadze on the occasion of their April 14 meeting in Geneva to sign the United Nations convention on Afghanistan. On April 15, the Soviet Ambassador in Washington delivered a letter to the Secretary from the Foreign Minister which commented on their discussion in Geneva.

Unfortunately, the letter raised more questions about the Soviet position than it answered. Compounding the problem was the fact that the Senate was provided two versions of the letter which differ in key respects. The first was an "unofficial" English-language translation of the original Russian text prepared by the Soviet Government that was sent by Ambassador Kampelman to Senator Pell on April 18. (Attachment 4.) The second was an "official" State Department translation sent by Secretary Shultz to Senator Dole on April 20. (Attachment 5.)

There were several problems with the April 15 Shevardnadze letter. For example, the first translation of the letter raised a question as to whether the Soviet Union agrees that unarmed (i.e., Category D) missiles are exempted from the Treaty. It is possible to read the phrase in the first translation of the letter "intermediate-range and shorter-range missiles, however equipped" as including surveillance drones or RPVs and other non-weapon-equipped missiles. In the second, official translation, the phrase "however equipped" was changed to read "however armed." The State Department explained that the Russian word in question could be translated both as "armed" and "equipped" but that during the INF negotiations it was standard practice to translate it as "armed."

Second, in both translations, the letter referred only to missiles which are equipped with "warheads." This is significant since, as previously noted, this issue first arose, in part, because the Article-by-Article Analysis appeared to indicate that only those INF missiles equipped with "warheads" were covered.

Furthermore, the letter failed to provide an explicit assurance that the Soviet Union agrees with the Administration's contention that the Parties understand the term "weapon-delivery vehicle" to mean "any INF missile which carries a weapon, that is, any mechanism or device which, when directed against a target, is designed to damage or destroy it."

Recognizing that many Senators were dissatisfied with the April 15 Shevardnadze letter, the Administration is now proposing to initiate an exchange of diplomatic notes with the Soviet Union to confirm the Parties' understanding as to the definition of "weapon-delivery vehicle" and the applicability of the Treaty to future INF weapons.

The question of the content of the U.S. note (and, in particular, the question of the adequacy of the Administration's definition of "weapon-delivery vehicle") is currently a matter of discussion within the Senate. Assuming agreement is reached on the content of the letter, some Senators have indicated that any exchange of notes with the Soviet Union on this issue would have to be incorporated into the Treaty as a legally binding document with the same status as the existing Memorandum of Understanding on data and the Protocols on Elimination and Inspection.

This requirement could be met through a Category III Understanding requiring that, as a condition for entering the Treaty into force, the President obtain a formal and binding assurance from the Soviet Union that it regards the exchange of notes as an integral part of the Treaty. Such an assurance would have to be secured through a procedure that would leave no doubt as to the explicit agreement of the Soviet Union to the Senate Understanding.

The Protocol of Exchange of Instruments of Ratification is the normal vehicle for recording such clarifications. It is this document which both Parties sign at the time they exchange their respective Instruments of Ratification which specifies the effect each Party gives to any conditions contained in the Instrument of Ratification of the other Party.

[Attachment 1]

U.S. SENATE,

Washington, DC, April 12, 1988.

Hon. CASPAR WEINBERGER,
Rogers & Wells,
Washington, DC.

DEAR CAP: As you may know, a question has been raised in the INF Treaty hearings as to whether or not the INF Treaty covers not just existing INF missiles and types like them, but futuristic weapons as well. The specific question that the Senate Armed Services Committee is now trying to resolve is what the common understanding was during our negotiation of the INF Treaty of the phrases "weapons delivery vehicle" and "deployed for weapons delivery."

The question is being debated because of the difference between the Administration's article-by-article analysis of the Treaty and the Administration's testimony concerning the meaning of "weapons delivery vehicle." The Administration's analysis clearly suggests that only cruise or ballistic missile carrying existing types of weapons—i.e., chemical, high explosive or nuclear warheads—were covered by the Treaty. Inde-

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the analysis says "weapons delivery vehicle" refers to missiles deployed or flight tested "with any type of warhead device or simulation thereof."

The Administration's most recent testimony, on the other hand, goes well beyond this analysis to include not just warheads, but "any mechanism or device which, when directed against a target, is designed to damage or destroy it." This would include ground-launched missiles carrying any radio or directed energy device or kinetic kill mechanisms that might do significant harm to their intended target.

The claim now made is that this latter all encompassing broad interpretation of the phrase "weapons delivery vehicle" was commonly understood at the time. This, then, brings me to my question. Is it your recollection, when you were Secretary of Defense, that it was commonly understood that the INF Treaty was going to cover not just INF-type missiles carrying existing types of warheads, but futuristic INF weapons carrying payloads unrelated to nuclear, chemical or high explosive munitions? Indeed, did you ever discuss this question with any official or have the implications of such a ban against futuristic weaponry evaluated by our military prior to the Treaty's signature?

[Attachment 2]

ROGERS & WELLS,
Washington, DC, April 13, 1988.

Hon. DAN QUAYLE,
Hart Senate Office Building,
Washington, DC.

DEAR DAN: In response to your question as to what consideration was given to "futuristic" weaponry beyond existing nuclear, chemical and high explosive munitions, prior to signing the INF Treaty, I can simply state that there was no understanding of any kind that I knew about that the treaty covered anything related to these so-called futuristic weapons.

Certainly, there was no discussion or evaluation of the military sufficiency questions involved in banning futuristic weaponry that I ever participated in, and I never heard any others having such a discussion. When conventionally armed missiles are mentioned in the treaty, my clear understanding was that everyone on our side was talking only about existing types of INF, cruise or ballistic missiles, or types similar to them carrying a conventional type—i.e., high explosive or chemical—munition.

Indeed, had there been any such suggestions that "futuristic" weapons were banned, I would have opposed it in the strongest possible terms, because it would have had an obvious adverse effect on SDI for us to agree to any limitation on any systems not yet designed or "futuristic" systems, and would have enabled the Soviets to argue that they have finally succeeded in making our SDI efforts ineffective.

With best wishes,

CAP.

[Attachment 3]

KEN ADELMAN,
Arlington, VA, April 13, 1988.

Hon. DAN QUAYLE,
U.S. Senator,
Washington, DC.

DEAR DAN: First, to answer the two questions posed in your letter of April 12th. (1) I cannot recall the issue of futuristic INF weapons ever arising during my tenure as ACDA Director. It was certainly not discussed in any National Security Council meeting I attended—and I attended all dealing with arms control—nor any meeting with Soviet officials with which I am familiar. (2) I am not aware of a ban on futuristic

INF weaponry ever being evaluated for its military or arms control implications. Again because futuristic systems was just not an issue then.

Second, to go beyond your questions: I feel strongly that the Armed Services Committee and the Senate as a whole needs to clear up all known ambiguities now. There will be ambiguities enough uncovered later without letting some pass by now. Hence, if the President believes that futuristic systems should be banned by the treaty—which I take it he does—that prohibition should be clearly agreed, not only between the Administration and the Senate but much more importantly between the Soviets and the Americans.

If this futuristic ban constitutes no problem for the Soviets, there should be no problem in getting their clear confirmation. If there would be a problem, I would be concerned. It would be similar to the Soviet refusal in 1971-72 to agree to our simple and straight-forward language banning futuristic ABM systems, a refusal which led me to consider the narrow interpretation of the ABM Treaty incorrect. I do not believe the U.S. should ever be bound by arms control restrictions to which the Soviets are not bound.

I know that it is the Senate's intention to do a more thorough job on INF than on previous arms control treaties. By clearing up known ambiguities now, not with the Administration but primarily with the Soviets, we can avoid a grand debate over the true meaning of the INF Treaty sixteen years from now, as we're now stuck with, on the ABM Treaty.

I stand ready to help the Senate in any way possible.

Sincerely,

KENNETH L. ADELMAN,
Ambassador.

[Attachment 4]

DEPARTMENT OF STATE,
Washington, DC, April 18, 1988.

Hon. CLAIBORNE PELL,
Chairman, Committee on Foreign Relations,
U.S. Senate

DEAR SENATOR PELL: In my letter to you of April 14, I reviewed the Administration's position on the issue of the possible use of future technologies in connection with INF missile systems. Although the Administration did not believe it necessary to confirm with the Soviet Union our common understanding on this issue, the Secretary raised this question with Foreign Minister Shevardnadze in Geneva on April 14 in order to meet the expressed concerns of some Senators.

On April 15, Ambassador Dubinin delivered Minister Shevardnadze's reply to the Secretary, a copy of which is attached. As you will note, Minister Shevardnadze confirmed that the Soviet side's understanding of this issue is the same as that of the U.S. side.

Sincerely,

MAX M. KAMPELMAN.

[Unofficial translation]

MR. SECRETARY: In our conversation in Geneva on April 14 you raised the question of the INF Treaty interpretation in connection with the fact that a question has arisen during the US Senate debate on this treaty as to whether the ban covers the intermediate- and shorter-range missiles that could be equipped with warheads developed with some future technologies. As you noted, in responding to senators the administration is saying that the Treaty ban covers intermediate- and shorter-range missiles, however equipped.

At the same time you were interested in knowing the Soviet side's understanding of this question so as to convey it to the US senators.

I would like to confirm to you once again that the Soviet side's understanding of this question is the same as that of the US side's. The definitive view of the Soviet side is that the Treaty on the Elimination of Intermediate-Range and Shorter-Range Missiles bans these two classes of missiles, however equipped, nuclear or any non-nuclear.

[Attachment 5]

THE SECRETARY OF STATE,
Washington, DC, April 20, 1988.

Hon. ROBERT DOLE,
U.S. Senate.

DEAR BOB: Many thanks for your letter of April 13. I was reassured to learn that you have again become involved in INF Treaty issues.

The Administration has given careful consideration to the question of the INF Treaty's effect on future technologies, ever since Senator Quayle raised this issue in Senate Armed Services Committee hearings beginning in January. The Administration has concluded that the INF negotiating record, viewed in conjunction with the Treaty text and with customary international law and the Vienna Convention on the Law of Treaties, demonstrates that the United States and the Soviet Union share a common understanding that all U.S. or Soviet ground-launched missiles with ranges between 500-5500 kilometers, both present and future, should be subject to the provisions of the INF Treaty.

During the INF negotiations, the United States and the Soviet Union did not specifically discuss INF ballistic and cruise missiles using future technologies, such as lasers, to damage or destroy targets; nor did the Parties specifically address the meaning of the term "weapon delivery vehicle". Instead, the Parties recognized that it was unnecessary to define in the Treaty terms which had ordinary, commonly understood meanings or where the common sense meaning of the term was intended by the Treaty. Indeed, Article 31 of the Vienna Convention on the Law of Treaties (which the U.S. recognizes as largely reflecting customary international law) provides that treaties "shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context . . ."

In the context of the INF Treaty, it is our considered judgment that the Parties understand the term "weapon-delivery vehicle" to mean any INF ballistic or cruise missile system that is tested or deployed to carry a weapon—that is, any mechanism or device which when directed against a target is designed to damage or destroy it.

The Senate Armed Services Committee, however, called upon the Administration to "demonstrate to the Senate's satisfaction, before the final floor vote on advice and consent, that the United States and the Soviet Union reached a clear understanding on this question." In addition, some Senators, including Senators Nunn and Quayle, have called a written confirmation of this understanding with the Soviet Union. As you know, the Administration believes that the INF Treaty stands on its own merit and opposes any Treaty amendments and conditions.

To meet these concerns by some Senators without requiring a written Soviet confirmation, which could possibly reopen the negotiations, the President decided that I should raise the issue with Foreign Minister Shevardnadze during my April 14 meeting with him in Geneva. Minister Shevardnadze told

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me that he was not aware there was a problem, but that he would look into the matter and get back to me.

On April 15 Ambassador Dubinin delivered Minister Shevardnadze's reply, a copy of which is attached. As you will note, Minister Shevardnadze confirms that the Soviet side's understanding of this issue is the same as that of the U.S. side.

I look forward to working with you in a common effort to conclude the Treaty ratification process successfully.

Sincerely yours,

GEORGE P. SHULTZ.

[Translation]

DEPARTMENT OF STATE,
DIVISION OF LANGUAGE SERVICES,

(LS No. 125833, BL/AO, Russian)

DEAR MR. SECRETARY: In the course of our conversation in Geneva on April 14 you touched on the question of the interpretation of the INF Treaty in connection with the fact that during the U.S. Senate debate of this Treaty, the question has arisen whether the ban extends also to intermediate and shorter-range missiles which could be armed¹ with warheads developed with some future technologies. As you noted, the Administration's response to the senators is that the ban under this Treaty covers intermediate and shorter-range missiles, however armed.¹

At the same time, you were interested in the Soviet side's understanding of this question in order to convey it to the U.S. senators.

I would like to confirm to you once again that the Soviet side's understanding of this question is the same as that of the U.S. side. The Soviet side unequivocally assumes that the Treaty on the Elimination of Intermediate-Range and Shorter-Range Missiles bans these two classes of missiles, irrespective of their armament¹, nuclear or any kind of nonnuclear.

Mr. QUAYLE. Will the Senator yield for a question?

The ACTING PRESIDENT pro tempore. The time for the proponents has expired.

Mr. WARNER. Has the time for proponents expired?

Knowing of no opponents at this time, I ask I—

The ACTING PRESIDENT pro tempore. Under the general procedures, the Senator from North Carolina being the ranking member of the Foreign Relations Committee, regardless of his position, would control the opponents' time.

Mr. HELMS. If the Senator will yield, I do not know if anybody opposes it.

The ACTING PRESIDENT pro tempore. Under the rules, the Senator from North Carolina controls the time. Because of that, he may yield to the Senator from Virginia.

Mr. HELMS. I shall accept the burden of controlling the time.

Mr. QUAYLE. Will the Senator from North Carolina or the Senator from Georgia yield me a few minutes so I can ask a question?

Mr. HELMS. I do not know that I have the floor.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina has the authority to control the time and the Chair will recognize those to whom the Senator yields time.

Mr. WARNER. Mr. President, may I suggest to the Senator from North Carolina that we proceed to frame the amendment, put it in, and then following that—I shall be brief—we will have such colloquy as other Members may desire.

Mr. BOREN addressed the Chair.

Mr. WARNER. I would suggest that as soon as I have completed my brief remarks, the distinguished chairman of the Intelligence Committee be recognized for the purpose of introducing the second part of this amendment together with the distinguished ranking member.

Mr. COHEN. It is already part of one.

Mr. WARNER. Very well.

Mr. HELMS. I understand the distinguished Senator from Oklahoma has an urgent meeting he must attend. Did he seek recognition?

Mr. BOREN. Mr. President, I thank the Senator from North Carolina. I am in the midst of a hearing. I was going to ask unanimous consent, and then perhaps I would make some very brief comments following the Senator from Virginia. We had originally envisioned under the time agreements that these would be separate amendments and therefore we would have been entitled to 40 minutes on the amendment in the second degree offered on behalf of Senator COHEN and myself and members of the Intelligence Committee.

Mr. President, I ask unanimous consent that 40 minutes be authorized for the discussion of this subject matter and that it be equally divided between the proponents and opponents of that amendment as if it were standing alone as a separate amendment as we discussed that originally in the time agreement.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered. Who yields time?

Mr. WARNER. Mr. President, I am happy to yield to the distinguished Senator from Oklahoma. As I understand he has a tight schedule.

Mr. BOREN. Mr. President, I thank my colleague from Virginia very much for yielding to me. I understand the second-degree amendment has been laid down by the distinguished Senator from North Carolina.

Mr. President, I am pleased to join in proposing this amendment to the resolution of ratification with my colleagues from Georgia, Virginia, and Maine, and also we have had the able assistance and cooperation of our friend and colleague from North Carolina. Our amendments will serve to add the weight of this treaty to two

subsequent agreements that have been reached between the United States and the Soviet Union. Those agreements bear the mark of Senate concern and encouragement. They are testaments both to the important role that this body can play and to the benefits that can flow from a policy that combines firmness with reason.

The first of the subsequent agreements concerns the definition of the term "weapon-delivery vehicle" and the application of the INF Treaty to missiles flight-tested or deployed to carry weapons based on future technologies. This is an issue that was first raised in the Armed Services Committee, which has performed a signal service to the Senate and to the country by pursuing this matter until a clear solution was obtained. My colleagues the chairman and ranking minority member of the Armed Services Committee, both of whom are also valued members of the Intelligence Committee, were steadfast in their insistence that this issue be decided clearly and authoritatively. They and the junior Senator from Indiana—Senator QUAYLE, who likewise deserves the appreciation of this body—kept the pressure on the executive branch and made sure that the final outcome was unambiguous.

The agreement concluded by exchange of notes in Geneva on May 12, 1988, was carefully reviewed by the Armed Services Committee before its submission to the Soviet Union, in a bipartisan cooperative effort between the executive and legislative branches. This approach is sadly rare in recent years, but perhaps our success in this case will serve as a model for future cooperation. We on the Intelligence Committee also were consulted regarding the notes to be exchanged between the United States and the Soviet Union, but our contribution was clearly secondary to that of the Armed Services Committee.

The second subsequent agreement, as recorded in a joint minute of May 12, 1988 signed by Ambassador Glitman and General Chervov, covers a wide variety of issues relating to implementation of the INF Treaty. These are matters that the Intelligence Committee followed closely for a period of several weeks. After a closed hearing on May 9, Senator COHEN and I advised that these issues were of such concern that the Senate ought not to begin debate on the treaty until they were settled to the satisfaction of the United States.

The Senate's firmness in this regard was crucial, I am certain, in convincing the Soviet Union to meet all the U.S. concerns on these issues. The success in Geneva on this matter is an example of what can be achieved when the executive and legislative branches work together and speak with a single voice. Our Nation desperately needs a revitalization of the traditional spirit of bipartisanship in foreign policy.

¹ The Russian word used here, "osnashcheny, osnashcheniye" can be translated both as "armed, armament" and "equipped, equipment". During the INF Treaty negotiations in Geneva, it was standard practice to translate it as "armed, armament".

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There were nine issues that the United States raised with the Soviet Union. It is worth quickly reviewing these issues, because they illustrate both the sort of problems that we must expect in implementing arms control treaties with the Soviet Union and—most importantly—how solutions to these problems are indeed possible, if we will be both firm and reasonable.

The first issue concerned the right of onsite inspectors to inspect any structure, container or vehicle that could contain the smallest treaty-limited item. The treaty clearly calls for this, but Soviets in the technical talks on treaty implementation had questioned that right. The joint minute confirms Soviet obligations under the treaty and solves the technical issue by specifying the small items for which each side's inspectors may search.

The second issue concerned the right of onsite inspectors to inspect the entire area of an inspection site, including all buildings within the outer boundaries shown on the site diagrams appended to the memorandum of understanding. Soviet technical negotiators had suggested that this was not the case, but the agreed minute makes this right absolutely clear. The Soviets also agreed that any later corrections to site diagrams will not exclude any areas in the current diagrams.

The third, and most complicated issue concerned the right of portal monitors at Votkinsk, the final assembly plant for the SS-20 and S-25 missiles, to search vehicles that are large and heavy enough to carry an SS-20 missile. The Soviets had argued that this meant a missile in its canister, while the United States maintains that it means a missile inside or outside its canister. The Soviet Union agreed at Geneva not to ship out of Votkinsk any cargo with a length or diameter greater than that of the SS-20 missile, but less than that of the SS-20 canister. They also agreed to consider the length of the missile to be 14.00 meters for this purpose. The United States, in turn, reassured the Soviet Union that if no shipments come out of Votkinsk with a dimension between that of the SS-20 and that of its canister, the U.S. monitors will not be inspecting any shipments smaller than an SS-20 canister. This is because any shipment smaller than the SS-20 is not covered by the treaty.

The practical effect of this complicated paragraph, then, is to provide the United States with a Soviet commitment not to ship out of Votkinsk any cargoes that we might fear were SS-20's. Passage of this amendment to the resolution of ratification will make clear that this Soviet commitment will have the same force and effect as the treaty itself.

The fourth issue concerned the right of onsite inspectors to bring and use such equipment as cameras, weighing

devices, and radiation detection devices. Soviet technical negotiators had tried to assert a right to block the use of equipment under some circumstances, but the agreed minute makes clear that the protocol on inspections governs this question. The agreed minute cites, as an example, one major issue—the obligation of host-country escorts to photograph an object or building if the onsite inspectors believe that a question remains concerning that object or building. So the United States achieved its objectives on this matter as well.

The fifth issue concerned the means by which to verify the technical data in the memorandum of understanding on the weights and dimensions of treaty-limited items. The agreed minute sets up these procedures to U.S. satisfaction, including agreement that the stages of the SS-20 missile will be weighed and measured.

The sixth issue concerned the means of determining that an SS-20 missile slated for elimination is indeed an SS-20. The Soviets have agreed that this can include looking into the launch canister from both ends and using the same equipment and procedures that we have developed for inspecting a missile canister at Votkinsk. They also agreed that if these steps should prove insufficient to convince the U.S. inspector that the item is indeed an SS-20, the Soviets will be obligated to do whatever is necessary to remove the inspector's doubts.

The seventh issue concerned the length of the SS-12 missile's first stage and of the SS-23 missile's propulsion stage. The Soviet Union agreed that the length of the SS-23 stage would be changed to delete the length of an interstate connector that was disclosed by the photographs provided under the treaty. The SS-12 first stage's length was left unchanged, because the interstate connector on that missile does not separate from the first stage in flight.

The eighth issue concerned each side's requests for better photographs of treaty-limited missiles. The Soviets have now provided pictures of three missiles with their front sections attached, plus a picture of the front section of the SS-20, which apparently is not attached to the missile until it is inside the launch canister. The United States, in turn, has provided the Soviets with new pictures of the Pershing I-A and Pershing II missiles.

The final issue raised by the United States concerned the means by which each side will notify the other of the intermediate stops at which missiles in transit have been located. The Soviets agreed to provide both the place-name and its center coordinates in minutes. This will enable the United States to determine whether any questionable items that it might observe through national technical means are in fact items that were moved legally under the transit provisions of the treaty.

The agreed minute also reassures the Soviet Union that their onsite inspectors may search for the second stages of United States missiles and are to be told by their United States hosts where such second stages are located. This is fully in keeping with U.S. obligations under the treaty itself.

Finally, the agreed minute includes the U.S. declaration that Davis Monthan Air Force Base, AZ, will serve as the elimination facility for the BGM-109G cruise missile. The United States also agrees to inform the Soviets of our other elimination sites before the treaty enters into force, which is again quite in keeping with our obligations under the treaty.

In conclusion, Mr. President, I would like to reiterate that the agreed minute signed in Geneva on May 12 is a success for United States negotiators that shows how a firm and reasonable approach to dealing with the Soviet Union can result in agreements that are to everybody's advantage. This agreement also shows that the Senate can play a most useful role by scrutinizing arms control treaties and insisting upon clarity both in the treaties and in Soviet acceptance of their treaty obligations.

The Senate's role in this effort has been to strengthen the U.S. negotiating position and to remove some potentially significant obstacles to the effective implementation of this treaty. By passing this amendment to the resolution of ratification, we will give these fine agreements the force and effect of the treaty itself—and thereby make absolutely unambiguous the obligations on both the United States and the Soviet Union that they contain.

I urge all my colleagues to support these amendments.

Again, Mr. President, I thank my colleague from Virginia for his courtesy in yielding to me as I do have to return to another meeting. I thank all those on both committees who worked with us, particularly the vice chairman of the Intelligence Committee, on the issues raised on the nine points and the very significant contribution that he made to the resolution of these matters in our committee. I think it is a tribute to the work of both of these committees that these issues have not been satisfactorily resolved and a tribute to the administration to work with us in order to see it happen. Again, I thank my colleagues.

Mr. COHEN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina.

Mr. HELMS. How much time does the Senator require.

Mr. COHEN. Two minutes.

Mr. HELMS. Let us make it 4 minutes, and the Senator can yield back the time.

Mr. COHEN. I thank the Senator for yielding.

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Mr. President, I will be brief. I would like to associate myself, first of all, with the remarks of the distinguished Senator from Oklahoma, with whom I work very closely on the Intelligence Committee, and simply point out that this is not a mere technicality. This is not a technical matter, as such. This addresses a very substantive matter regarding the treaty.

It came about as a result of not only a different interpretation of treaty terms on the part of the Soviet Union but an apparent Soviet attempt to repudiate the actual text of the treaty regarding what I consider to be rather fundamental matters such as what objects will be inspected, where the inspectors will conduct their inspections, and what inspection equipment will in fact be used.

It struck us as puzzling, certainly, that in the technical talks the Soviet side would raise objections to the clear language of the treaty. This was so serious that Senator BOREN and I felt that we could not in good conscience recommend that the treaty be brought to the floor for debate and deliberation and advice and consent to ratification until such disputes were clearly resolved, so that there would be no ambiguity, no misinterpretation, no potential for the Soviets at some future time to assert that they had a different interpretation and therefore not be bound by the clear wording of the treaty text.

That was the reason we publicly recommended to Senator BYRD and to Senator DOLE that the treaty not come to the Senator floor until these problems could be resolved. As a result of the objections raised in the Intelligence Committee, Ambassador Glitman, Secretary Shultz, and others were able to resolve these disputes in a record period of time, about a day and a half or 2 days. The reconciliation of these points they achieved I think has been clearly established now. We have this resolution in the agreed minute of May 12 which is addressed by the amendment now before the Senate.

I would simply like to point out that we have insisted that it be a category III. This is because while the agreed minute may in fact be legally binding upon the Soviets and upon the United States, nonetheless an agreed minute might be viewed by some as subordinate to the treaty itself. Moreover, an agreed minute could be changed in the future without the consent of the U.S. Senate. We want to make it perfectly clear that the agreed minute cannot be terminated or altered by the executive branch without the advice and consent of the Senate. For these reasons, we insisted it be a category III so that there is no question that the agreed minute has the same status as the treaty itself.

The agreed minute, itself, makes clear the resolution of those areas of dispute—such as the smallest size object subject to inspection; where the inspectors can, in fact, conduct inspec-

tions; what size object shall not be shipped out of the Votkinsk plant; and the equipment that will be used in the inspection process.

All of that now is clearly set forth in the agreed minute which is made integral to the treaty by this category III amendment.

I think it is a very substantive matter addressed by the agreed minute and the amendment. I think we should move toward adoption of the amendment as soon as possible.

I thank the Senator from North Carolina for yielding.

Mr. HELMS and Mr. WARNER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

Mr. WARNER. Mr. President, first I would like to correct a possible error at the desk. The amendment submitted by the Senator from Georgia and myself would be known as the Nunn-Warner amendment, which is the first part of the amendment that is now pending.

Mr. President, I wish to associate myself with the remarks of the distinguished chairman of the Armed Services Committee, Mr. NUNN.

The ACTING PRESIDENT pro tempore. It will take unanimous consent.

Mr. WARNER. Mr. President, I ask unanimous consent that the technical change be made.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. COHEN. Might I reserve the right to object? The first part of the amendment is the Nunn-Warner.

Mr. WARNER. That is correct.

Mr. COHEN. But I understand the Boren-Cohen provision regarding the agreed minute on inspections is now part of the Nunn-Warner.

Mr. WARNER. Mr. President, the confusion arose when I submitted the amendment which started off as Warner. I wanted to turn it to the order that we listed in the amendment which is Nunn-Warner-Boren-Dole. And Mr. HELMS—

Mr. COHEN. Is it a separate amendment which will be debated shortly?

Mr. WARNER. That is correct.

The PRESIDING OFFICER. Who yields time? As to the time available, the Senator from North Carolina has 34 minutes but the Senator from Maine would have 14 minutes on the Boren unanimous consent.

Mr. HELMS. Mr. President, if I may interject.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, we thought there was going to be trouble at the time we lumped all of it together. I do want a little time to speak in support of the Nunn-Warner, and I assume that I will be added as a cosponsor of it. While I am at it, I ask unanimous consent that, if I am not identified as a cosponsor of Nunn-Warner, that I may be made a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I also ask unanimous consent that on the second-degree amendment, the distinguished majority leader, Mr. BYRD, the distinguished minority leader, Mr. DOLE, and the distinguished assistant minority leader, Mr. SIMPSON be added as cosponsors of the second-degree amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time.

Mr. WARNER. Mr. President, if the Senator would indulge me.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, I ask unanimous consent, because there has been some confusion on this, that the amendment be listed as the Nunn-Warner-Boren-Cohen-Helms amendment. That was the way we had intended it to go to the desk to begin with. I am not sure it went to the desk quite that way. But nevertheless I ask unanimous consent that it be listed that way.

The PRESIDING OFFICER (Mr. REID). Hearing no objection, that will be the order.

Mr. NUNN. I thank the Chair. It is my understanding also that the second-degree amendment will be listed as the Helms amendment or has been listed as the Helms amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, at this time I will proceed under the time allocated by the Senator from Virginia to the Senator from North Carolina.

Mr. QUAYLE addressed the Chair.

The PRESIDING OFFICER. Who yields time to the Senator from Indiana?

Mr. WARNER. Mr. President, I think we have a rather informal arrangement on time. The Senator from North Carolina controls a block which I am sure he is willing to yield.

Mr. COHEN. I think I have 14 minutes of Senator BOREN's time remaining.

The PRESIDING OFFICER. The Senator is correct.

Mr. COHEN. I yield such time as the Senator from Indiana may consume.

The PRESIDING OFFICER. The Senator from Indiana is recognized for 14 minutes.

Mr. QUAYLE. Mr. President, I rise to try to put into the Record a little bit of definitional history to these agreed-upon diplomatic notes of exchange.

I wonder if either the chairman of the Armed Services Committee or the ranking member can give me what the origin is of this commonly understood definition of a weapon—where it came from. I have looked long and hard for the origin of the definition of "weapon" which is commonly understood. I have looked in Webster's dictionary. I have looked in the Joint

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Chiefs of Staff dictionary. I have looked in the Russian military dictionary. I do not find the commonly understood definition of a weapon as something that is designed to damage and destroy.

I believe that the definition was somewhat discovered or made up along the way. That is fine. We agree now. The Soviet Union and the United States agree on it. There is no dispute on the agreement. I am just curious, as a matter of record and historical perspective, where we got this definition of weapon.

Mr. WARNER. To the extent we received it, it was received from the authoritative testimony of administration witnesses.

Mr. QUAYLE. It was received from the authoritative testimony of administration witnesses, and where did they get the definition?

Mr. WARNER. Mr. President, the hearing record may reflect that. So far as I know, it was a term that was generally accepted, they felt, within military parlance, and they selected and used it.

Mr. QUAYLE. Is there any definition of "weapon"—and the Senator from Virginia is a former Secretary of the Navy—that it is something designed to damage and destroy?

Mr. WARNER. Mr. President, so far as I know, there is no recorded definition.

Mr. QUAYLE. Was there anything in the negotiating record—any letters, any discussion—that this definition of weapon was something that was designed to damage or destroy?

Mr. WARNER. Not to the knowledge of this Senator.

Mr. QUAYLE. In other words, there is absolutely nothing in the negotiating record, no discussion beforehand, of this commonly-understood definition of weapon. That is my understanding as well.

Now that we are on this commonly-understood definition, it gets into interpretation. The Senate, so far as this issue in the future is concerned, did the right thing, because we were told by administration witnesses—we raised the question, and first they could not give us an authoritative definition of weapon or weapon delivery vehicle. But then they came back and said it is commonly understood.

If we had relied on that commonly understood definition, the Senate would have made a grave mistake, because what the Armed Services Committee demanded in testimony before the Foreign Relations Committee was that we have to nail down this definition and have to nail it down with the Soviet Union. I thought that once we had this commonly understood definition of weapon, we should bring it up with Foreign Minister Shevardnadze and say, "This is our commonly understood definition of weapon." I understood it was orally communicated, that it was designed to damage or destroy a target. I was under the impression

that they understood that was the case.

Then we received a letter from Foreign Minister Shevardnadze, and he used the word "warhead." Warhead was the same definition used by the State Department article-by-article analysis.

So, we never did have this definition of what a weapon was or what a weapon delivery system was. To my knowledge, we simply made it up. We created this definition. The Soviets now agree to this definition.

Instead of just relying on testimony that was given by administration witnesses, the Senate rightfully demanded that we go back and ascertain that the Soviet Union agreed with this definition; and that was good, constructive dialog and good, constructive work. The Senate really got into this issue.

We went to the negotiating record and there was nothing in the negotiating record. We asked the administration witnesses whether there was any discussion beforehand of the so-called futuristics, and the answer came back that there were not any real discussions—no memorandum, no oral discussions. As a matter of fact, the former Secretary of Defense, intimately involved in the negotiations, said futuristic issues were never discussed.

Mr. WARNER. Mr. President, will the Senator yield?

Mr. QUAYLE. I yield.

Mr. WARNER. The Arms Control and Disarmament Agency did send to the Senate an interagency definition of what constitutes a weapon delivery system.

Mr. QUAYLE. When was that definition—

Mr. WARNER. I will soon be able to supply the Senator with that definition.

Mr. QUAYLE. They have a definition as of today?

Mr. WARNER. No. It was sent to the Senate in the course of the hearings.

Mr. QUAYLE. A definition of a weapon?

Mr. WARNER. A weapon delivery system.

A weapon delivery vehicle is defined as a weapon that when directed against a target, it will damage or destroy it. Damage and destroy are defined as follows:

Damage means an externally caused change in the target condition which requires that the target be repaired by external intervention in order to be able, once again, to perform its original function.

Destroy means an externally caused change in target condition such that restoration of the target to its original condition requires at least as much time and effort as to create the target from scratch.

Mr. QUAYLE. That was established after we raised the question of the futures. Is that correct?

That is my point. We did not have this commonly understood definition

of weapon until the issue was raised; and once the issue was raised, they said it is commonly understood. If we just relied on that testimony as commonly understood, the Soviet Union had a commonly understood definition, according to the Shevardnadze letter, of "warhead" or "however armed" or "however equipped," whichever translation you want to use.

So I think the record clearly shows that this was not commonly understood, that it was a definition simply made up once these questions came; and I think that is a very important fact, as we take very cautious deliberations on treaties. We did not just rely upon the testimony of administration officials. We said: "You have to do more than that, because what you say is commonly understood, we cannot find."

If we stopped there and said we agree with it, that it is commonly understood, the Senate would not have done its job. But the Senate did its job. It was not commonly understood, even though we were told that, and we went back, and we now have this definition which is agreed upon.

I think it is unfortunate that we got into the banning of futuristics. It is difficult to ban something we do not know anything about. I hope others will agree with that. I think there is strong agreement. I know that in the discussions in the Armed Services Committee and the Intelligence Committee, it was very perplexing to try to ban something we did not know anything about. Banning things in the future is very difficult.

Mr. President, another problem we have with this definition is, how do we define damage? Damage is something that needs repair. If you damage something temporarily and it does not need repair, that is OK; but if you damage something and it needs repair, that is not OK. If you design a weapons system that does not have damage that needs repair, that is OK, too.

So we are getting into verification, of getting inside the Soviet mind and verifying intent, verifying whether a system was designed to do something. I submit to the Senate that that is almost impossible. I think it is impossible, unless you are simply going to take a statement of good faith: "Oh, well, this weapons system was not designed to damage, and therefore it was OK."

I am sure the Congress of the United States will make sure that the Defense Department and this administration do not go beyond that. I am not sure that the supreme Soviet and the constituency in the Soviet Union will do that. I think that when we get into verifying design and intent, it is impossible.

Mr. WARNER. Mr. President, I ask the Senator to yield for the purpose of putting into the RECORD a complete definition of damage, which we understood in the course of our hearings to

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be the authoritative representation of the administration.

Damage is acceptable if it can be internally repaired. By that I mean, the system repairs itself.

Mr. QUAYLE. Then, it is not damage?

Mr. WARNER. It is not damage. But we have to bring in some external assistance.

Mr. QUAYLE. In other words, if it can self-repair, it is OK; but if it does not self-repair, you cannot do it.

Mr. WARNER. The Senator is correct.

Mr. QUAYLE. If you would design a weapons system that you did not want to damage but it happened to damage, that would be OK, because it was designed not to damage. We have national technical means. I am not sure how these national technical means are going to get inside the Soviet mind, and figure out how something is designed to damage.

But that is the definition. Now you are going to put in exhaustive definition of damage and I assume that that is also commonly understood, right?

Mr. WARNER. Mr. President, I am not sure how common it is understood, but it is the definition that has been provided by the administration as authoritative testimony to clarify this point raised by the Senator from Indiana and others.

Mr. NUNN. Mr. President, will the Senator yield for a brief observation?

Mr. QUAYLE. I am glad to yield.

Mr. NUNN. Mr. President, the Senator from Indiana makes a good point here, but it really also applies to the word "destroy." Any time you use the words "design to" those are the words that activate the subjective judgment. Whatever follows that, whether it is the word "damage" or "destroy" it is still subject to that subjective judgment by the designers. It will be very difficult to basically prove in a court of law any of these things.

So you are really in a political contest with the Soviet Union if this subject comes up on either side. But if you design a system to destroy that is a subjective judgment. It can fall short of destruction and yet be designed to destroy. Or I suppose it is theoretically possible that it could destroy on some occasions but not having been designed to.

The same applies to "damage." When you put the words "designed to" before the word "damage" it is subjective. Was it designed to damage or was it designed simply to interfere?

So I would say to the Senator from Indiana the point he is making is correct and valid. There is a subjective judgment. It is going to be terribly difficult for us to draw the line, but the same thing would apply if you did not have the word "damage" and simply has the word "destroy."

Mr. QUAYLE. I wonder if the Senator might agree with me what we are seeing is a very difficult problem when we start banning futuristic system,

that when we start banning futuristic systems we are getting ourselves in really what I call sort of never, never land. We do not know what these systems are and that is why we have to resort to such types of definition as "designed" whether it is to damage or destroy.

Would he agree with me it is very problematic in the future we ought to be very careful about going down the road and banning futuristic systems that we do not know anything about?

Mr. NUNN. I think the Senator is correct in this area because I think it is very difficult to draw a line here. On the other hand, if you basically, clearly and unequivocally exclude futuristic systems, then you will give a real incentive to the Soviet Union to go out and to take ground-launched cruise missiles and to take warheads off of them and put every conceivable device you can imagine in the future on them. So it cuts both ways. You have to make a judgment whether—in my opinion our country usually abides, sometimes we are not perfect—but usually we abide by the letter and the spirit of treaties. I cannot say the same thing for the Soviet Union. Usually based on history they push right up to the point and sometimes they cross that point.

So we have to have a definition here that we understand, and I was very careful in my statement to point out systems that, based on our hearings and based on the testimony, the surveillance systems and several other type systems that are not banned by this treaty, so I think that we have a record in the committee and here on the floor as to what we believe are not covered here, and I think we are going to have to move forward with our research and development in these areas to determine the future course of those.

There are occasions where if you had gotten out front—

Mr. QUAYLE. Mr. President, I ask unanimous consent—is the time up?

The PRESIDING OFFICER. The Senator from Maine has control of the time and he has about a minute and a half left.

Mr. QUAYLE. Could I ask unanimous consent at the time for debate be extended for 5 minutes?

Mr. NUNN. We have extra time I think if the Senator from North Carolina will yield a couple minutes.

The PRESIDING OFFICER. The Senator from North Carolina has time.

Mr. HELMS. I yield an additional 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NUNN. There are periods in history if arms control agreements can get out in front of something that is going to happen it is to the advantage of both sides.

So I do not want to say that we should never get out in front on future weapons. For instance, if both sides

had never had MIRV'd missiles, we would not have the SS-18 threat, we would not have some of our vulnerability threats we have now and we would have a much more stable situation. But we did not get out in front of that situation.

Let me give you another futures problem. We are going to be struggling with this one in conference. I do not know how we are going to come out of it. But a real big problem for the United States in terms of vulnerability would be if the Soviet Union starts testing present trajectory tests so instead of having a missile go up and come down in a normal pattern you have a capability for present trajectory. If they start doing that it changes the whole vulnerability pattern, it changes our warning time in this country, it makes the submarines off the shore much more threatening and I suppose they might feel the same way if we start that kind of testing.

The House of Representatives has passed an effort to begin curbing that on both sides. I am not sure what my position is going to be.

What I am saying is we do not want to make a statement, whatever we do in arms control we simply open up the future and never try to deal with it.

At some point we have to get out in front of the things that are coming down the line. Although I would say when you get into this, it is enormously difficult.

Mr. QUAYLE. Would the Senator agree with me when we went through this in the Senate Armed Services Committee, in trying to get a definition of what a weapons delivery vehicle was, an original State Department article by article analysis referred to warhead. Certainly my understanding of a warhead was a nuclear warhead, a conventional warhead, and a chemical warhead. I believe that was certainly understood, whether it was a warhead like that today or a warhead like that in the future, and that was the futuristics issue.

But what we did was simply take that definition and say that is not good enough. We have to go beyond that once these questions came up. If they would just have stuck to the traditional word "warhead" I think we would have had a much better understanding of what this treaty banned and what it does not ban because I think once we got down that road of banning all the futuristics and getting into the design, the damage or destroy, or even if you left out the word "damage" when you start getting into design and to banning something beyond what we know as a warhead, I believe you are asking for trouble. I think it is a mistake that they made going down that route.

I ask the Senator if he would agree with that observation.

Mr. NUNN. I would not want to agree completely with that because do not know I could see that far in the

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future as to which side might want to exploit this more nearly if we had left that out because if we left it out completely and never asked any questions about it, then we could have had a major dispute with the Soviet Union moving out in this area and the United States being reluctant to do so because of the treaty implications.

So I think it is much better whatever the outcome of it we at least participated in it and both sides are going to be bound by the same rules.

Mr. QUAYLE. I agree both sides need to be bound by the same rules. I think it would certainly be possible and do not think there is any dispute we are bound by the Shevardnadze letter that referred to warhead. The State Department referred to warhead. There is certainly a common understanding what a warhead is. A warhead is an explosive device, whether chemical, conventional, or nuclear. There is where we should have rested our case.

The other stuff you simply do not know. If it is an explosive device that is a weapon it is a warhead and it is out. But we have gotten into this thing designed to damage or destroy, and you get into that.

Another thing is the balanced technology initiative of which the Senator from Georgia has been the champion.

You are talking about high-powered microwaves, talking lasers, all sorts of things, and this type of banning will have an impact on the balance technology initiative if we ever want to do the ground launch because they simply would not be able to do it.

So there are a lot of problems with this definition.

I ask for 2 more minutes.

Mr. NUNN. I believe the Senator makes a very good point. There are a lot of problems with this definition. We are going to have some of them in the future. I say, though, in this area there are a lot of problems wherever you try to draw that line. I think if you draw the line simply on warheads, given the political situation we face in NATO, and we have said to the Soviet Union, OK, clear line, nothing but warheads, future weapons are OK, we might have developed those weapons in this country, and we might even have an edge. I think we do in the technological development of some of those weapons. What happens when it comes time to deploy them, though?

We went through one terrible difficulty in deploying Pershing II missiles and other missiles. What kind of repercussions would there be within the NATO alliance? We face some political problems we have to deal with here, too.

Mr. QUAYLE. I think the NATO allies and particularly the Pershing II and the ground launch cruise missile, the problem there from a political point of view they were nuclear. We are talking about conventional.

I think NATO is going to welcome conventional weapons that are going

to raise that nuclear threshold and become less dependent on nuclear weapons.

This, as the Senator pointed out, is to our advantage, and what we have done is conceded something that is to our advantage from a technological point of view in this arms control agreement which is more of a conventional arms control agreement than it is one dedicated to getting rid of nuclear weapons.

That is my problem.

Mr. NUNN. Mr. President, I must say I have many of the same concerns the Senator from Indiana articulated this morning. He does make a good point on a number of concerns.

The PRESIDING OFFICER. The time has expired.

Mr. HELMS. Mr. President, I yield myself such time as I may require.

First of all, in the event it is needed to clarify the unanimous-consent request earlier, I identified the cosponsors of the amendment, and I want to make it clear that the cosponsors I identified are being associated with the amendment which I shall subsequently offer with reference to a declaration. I ask unanimous consent, if such a unanimous consent is required, that that be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, what we have heard here underscores what some of us have been trying to say all along—that haste makes waste. We have heard the very erudite discussion between the able Senator from Indiana, Mr. QUAYLE, and the distinguished Senator from Georgia, Mr. NUNN, which ought to be explored longer on this floor than it will be. I commend the Senator from Indiana for his knowledge and his study of this matter and his eloquent discussion of it.

The problem is, from the very beginning, we have been trying to make a silk purse out of a sow's ear. This treaty is fatally flawed. That is why, standing alone early on, I tried to raise a hand and say, "Wait a moment. Let's think about it." We had a plethora of administration witnesses coming up contradicting each other, making statements implying that this treaty was perfect. They took the position at the very outset that we must not have one amendment to the treaty. And we have not had. They took that position because they were scared to death to go back to Mr. Gorbachev and say, "Look, we fouled up." They wanted a treaty at any cost.

Then came the cloture motion which was filed by the distinguished majority leader, Mr. BYRD. I have known Senator BYRD for a long time, and I respect him. I have no notion whatsoever that Senator BYRD would have filed that cloture motion had it not been for that excursion to Moscow by the President, which, as much as anything else, is going to be a PR trip. So the Senate has fallen in line, and that

is all right. I did what my conscience told me to do. I did the best I could. But when the cloture motion was filed, the ballgame was over. One way or another, we could have fought it out and kept Senators here on Sunday and Monday, but that is no way to operate around this place.

So now I'm trying to salvage what I can. We made some headway in that regard with respect to the resolution of ratification, but not to the treaty, not to the treaty text. And there is a difference.

I am a cosponsor of the Nunn-Warner amendment to which I have sent to the desk a second-degree amendment. I will discuss the second-degree amendment momentarily, but first let me discuss, if I may, the underlying amendment by Mr. NUNN and Mr. WARNER.

I think it is absolutely essential that we remember that, while the SALT II Treaty did not come before the full Senate, it was considered and approved by the Committee on Foreign Relations. History repeats itself. Thus, we have an important parallel to the committee's consideration of that treaty which seems appropriate to apply to this treaty, the INF Treaty.

As a part of the very first day's markup of the SALT II Treaty, the Foreign Relations Committee added explicitly to the treaty text the "agreed statements and common understandings" that had been signed at Vienna on June 18, 1979.

There was that old process that I just alluded to—trying to make a silk purse out of a sow's ear. It cannot be done.

The same issue arose then that has arisen now: What is the precise legal status of the "extra-treaty" representations, documents and so forth, supposedly agreed to by the two parties? I had one heck of a time getting the State Department to fess up on various matters, including secret exchanges that still have not been made public to the American people.

Well, let us go back to 1979 and the SALT II Treaty. The Foreign Relations Committee that year unanimously adopted a so-called category III—that means binding language—category III amendment to the treaty providing "That the agreed statements and common understandings associated with the treaty and protocol signed on June 18, 1979, with the treaty are of the same force and effect as the provisions of the treaty itself and the protocol."

All right. Now, the State Department people came up here back then and contended, just as the current representatives have done with respect to this INF Treaty, that such an amendment to the treaty was not really necessary. The State Department claimed that the agreed statements and common understandings were equally binding on the Soviets as the treaty text and protocol. Just so, Secretary

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Shultz and Ambassador Kampelman claimed back on May 16, just a few days ago, that the diplomatic note and minute are equally binding on the Soviets as are the treaty text and the protocols, together with the memorandum of understanding.

The point is, Mr. President, in order to make explicit the incorporation of the Soviets' assurances in SALT II, the Foreign Relations Committee, in 1979, adopted, by a unanimous vote, the amendment which I read into the Record a minute ago.

But I think the purpose of such an amendment was eloquently stated—and this was 1979, SALT II—by the distinguished Senator from Maryland, [Mr. SARBANES]. Let me read you what he said.

It seems to me that one of our responsibilities in doing a craftsmanlike and professional markup with respect to these documents is to clarify in those instances in which we think clarification is necessary. There have been a number of instances in which it has been asserted that there is agreement with respect to certain meanings, and there may be some doubt about that.

Well, that was an understatement, but the Senator was exactly correct.

I would interject that the present situation is precisely the same. That is a reason I have been here on this floor for the last 10 days. That is the reason I did what I could in the Foreign Relations Committee.

I say to you, Mr. President, that Secretary Shultz and Foreign Minister Shevardnadze would not have had to deal with these nine verification issues and to the futuristic issue if there had been a perfect agreement about the meaning of these provisions in the treaty.

Senator SARBANES continued in an eloquent fashion. He said:

One of the ways to remove this doubt is, of course, to go through the process which we are not going through with respect to these matters.

Now, I do not contend that the Soviets have an entirely different view of this particular issue that is now before us. In fact, it has been asserted to us that they in fact agree that these statements and understandings are legally binding as is the treaty, but they are not part of the treaty.

As part of doing a craftsmanlike job, we are now going to make them a part of this treaty through this reservation. We will deal with other issues of that sort, I am sure, later. Some people will propose changes that do not represent the clarification of supposed understanding between the parties, but may in fact involve a matter in which the proposal clearly is changing an understanding reached in the treaty. At that point, we will have to judge that accordingly.

I do not make of this what I think we would have to make of a proposal of that latter sort, but it seems to me this is an essential part of doing a good job here in the committee." [October 15, 1979, page 18, Part 6 (Markup) of SALT II Treaty Hearings before the Committee on Foreign Relations.]

Mr. HELMS. Parenthetically, I note that the only opposition to the 1979 amendment was that Senator LUGAR, the distinguished Senator from Indi-

ana, contended that the amendment did not do enough to cure the obvious defects in the SALT II Treaty.

Senator LUGAR said:

Let us call it for what it is. It is a way of covering yourself for a pro-SALT II vote.

That is what has been going on around here. Senators want to cover their backsides because they nervously anticipate that just a few years down the road they are going to regret this bum's rush to ratify this sow's ear.

Senator Percy also noted the importance of clarifying such issues by amendment, saying:

I think it establishes the precedent and procedure for understandings, statements, and so forth that will be considered an integral part of the treaty and which really go to the heart of it. . . . They are so essential that I could not possibly vote for the treaty without them. As during the Panama Canal debate we did not accept the joint statement made at the White House; rather, we made the statement a part of the treaty itself.

I believe that satisfied some of us that it was binding upon both parties. So, I think this procedure is an essential and necessary procedure. . . .

Senator Percy reminded the committee of a good point in 1979 which bears repeating in 1988. The Senate did take action in the 1978 consideration of the Panama Canal Treaties to incorporate various statements into the text of the treaty. It did not make any difference to Torrijos and Noriega. They paid no attention whatsoever to the two treaties giving away the Panama Canal.

The same approach was necessary in 1979 during the Foreign Relations Committee deliberations on the SALT II Treaty.

I submit, to the point of being redundant and repetitive, that this is what we ought to have done in the first place. We should have taken our time. When the President took off from Andrews Air Force Base yesterday, this Senate ought to have been engaged in consideration, careful consideration of the implications of this treaty.

But, no, there came the rush. I do not think Senator BYRD really wanted, in his heart of hearts, to shut off debate and to shut off the possibility of further amendments except for the time pressures with respect to the President's trip. I shall forever be grateful to BOB BYRD for his constancy in protecting the meaning and the purpose and the traditions of this Senate. But he has done what he did to accommodate the President of the United States and that is fine.

So here we are. DANNY QUAYLE made excellent sense in his discussion with the distinguished Senator from Georgia [Mr. NUNN]. We ought to have had a day or more, whatever is necessary, to discuss this point because I am afraid it is going to come back to haunt us because we did not do it right. The sow's ear is still a sow's ear.

It should be clear to all that the kind of approach we have taken is

unwise. But that is a fait accompli. It is a proper and appropriate decision by the Senate every time we have a treaty to make certain that our constitutional role in granting advice and consent is taken seriously. If we are not going to take it seriously, take it out of the Constitution. Let this Senate never be a rubber stamp for another President of the United States.

Obviously this treaty lacked the perfection claimed for it by the steady stream of advocates of the treaty who came before the Foreign Relations Committee day after day and who worked assiduously to make sure that no amendment to the treaty text would be accepted. And, of course, it was not. Of course, the media hooted and hollered: Oh, these few conservatives were beat down, they were overwhelmed yesterday by an enormous vote. Well, we were. We were.

But history is going to decide and disclose who was right and who was wrong.

Because the same media that have been so gleefully engaged in a putting down of admittedly a few Senators, 10 years ago were saying: Let us go with the give-away of the Panama Canal. They were wrong then and they are wrong now. Our job in the Senate is to do the best we can to rectify as many errors as we can. And that brings me to the second-degree amendment which I have offered to the underlying amendment. I want to say a few words about that and I will yield the floor.

The second-degree amendment which I filed corrects a number of admitted errors, deficiencies, mistakes in the treaty text that have been acknowledged even by the State Department and identified by the State Department. The same crowd that says: Oh, this treaty is perfect. That is all we heard this entire year thus far. But now we know after months of declarations about the perfection of this treaty that it was as full of holes as a piece of Swiss cheese.

So modifications are imperative in order to make binding the clarifications with regard to the future risks issue, and some of the verification procedures on which the Soviets were attempting to renege, even before the treaty enters into force.

I might say, Mr. President, parenthetically, because it is relevant, that driving to work this morning, early this morning, I heard a report that President Reagan is going to be denied the opportunity of going to that monastery. The Soviets decided it would be bad PR for them. So the President and his party are going to have to make arrangements to get together with religious groups somewhere else at some other time. But this is the way the Soviets operate, and I do not know how to get the point across that you cannot trust them.

They are going to pursue the course whether the chairman—equi-

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lent of chairman—of the Communist Party, the Soviet Union, is the front man or somebody else. They have not changed, and I do not think they are going to change.

At any rate, this amendment, this second-degree amendment will make corrections in the treaty, including its memorandum of understanding and protocols for mistakes that were made in the unseemly haste to complete this treaty by the December summit—for the signing on December 8.

If they had spent a little more time they might have made only two dozen errors. As it turns out, they have made 50 or 60. I have lost count.

As further evidence of the haste, the initial corrections—get this, Mr. President—the initial corrections identified by the State Department and permitted by the State Department were made known in January. And now they have sent up some corrections to the corrections. Perhaps before it is all over, there will be corrections to the corrections to the corrections.

Hopefully, the State Department has it right this time. I hope they did a little better than they did in dealing with Noriega, for example. What a travesty that has been. And I might say parenthetically again, because I think it is relevant to the big picture, that if there had just been the decision to work with and accommodate the opposition to Mr. Noriega by allowing the opposition access to facilities owned by the United States of America, this problem in Panama would probably be resolved by now. We will never know.

But what we did was say, "Oh, no, oh, no; we cannot allow you access to our facilities."

And the same sort of message would go to freedom fighters in Hungary. And look what this Congress is doing to the freedom fighters in Central America.

So you go on and on and on, like Tennyson's brook.

The State Department was reluctant to admit all of these errors, to identify them or notify the Senate of them. But we finally obtained a copy of the corrigendum exchanged with the Soviets on May 21, and I received it, Mr. President, last night, May 25. It has been there all the time.

I do not think there is any objection whatsoever to the second-degree amendment, and I urge the adoption of it.

I inquire of the Chair if the yeas and nays have been obtained on the underlying amendment?

The PRESIDING OFFICER. They have not.

Mr. HELMS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. Mr. President, one further thing. Mr. President, am I recognized?

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I ask unanimous consent that the English language text of the notes of May 21, to which I have just alluded, done at Vienna and Moscow be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NOTES OF MAY 21, 1988

The Ministry of Foreign Affairs of the Union of Soviet Socialist Republics presents its compliments to the Embassy of the United States of America and has the honor to acknowledge receipt of the Embassy's Note of May 21, 1988, and Annex thereto containing notification of corrections to data submitted by the American side in accordance with the Memorandum of Understanding Regarding the Establishment of the Data Base for the Treaty Between the Union of Soviet Socialist Republics and the United States of America on the Elimination of Their Intermediate-Range and Shorter-Range Missiles of December 8, 1987. The Soviet side takes note of the aforementioned notification.

The Ministry also has the honor to advise the Embassy that the data submitted by the Soviet side in accordance with the Memorandum of Understanding Regarding the Establishment of the Data Base for the Treaty Between the Union of Soviet Socialist Republics and the United States of America on the Elimination of Their Intermediate-Range and Shorter-Range Missiles will be provided with corrections contained in the Annex to this note.

The Ministry further has the honor to advise that the Soviet side agrees to the proposal of the American side, contained in the Embassy's Note, to enter corrections to the text of paragraph I of section XI of the Protocol Regarding Inspections Relating to the Treaty Between the Union of Soviet Socialist Republics and the United States of America on the Elimination of Their Intermediate-Range and Shorter-Range Missiles for the end of the third sentence of that paragraph to read: "... pursuant to paragraph 11 of Section VI of this Protocol."

The Soviet side shares with the American side the understanding that the aforementioned Note of the Embassy and the Reply Note of the Ministry shall constitute a correction of the text of the Treaty.

The Ministry avails itself of this occasion to renew to the Embassy the assurance of its highest consideration.

Seal of the Ministry,

Moscow, May 21, 1988.

CORRECTIONS TO DATA

Submitted by the Soviet side in accordance with the Memorandum of Understanding Regarding the Establishment of the Data Base for the Treaty Between the Union of Soviet Socialist Republics and the United States of America on the Elimination of Their Intermediate-Range and Shorter-Range Missiles

1. In paragraph 2(a)(ii) [2(b)(ii) in English-language text] of Section IV of the Memorandum of Understanding, the geographic coordinates for the V.I. Lenin Petropavlovsk Heavy Machine Building Plant, Petropavlovsk, should be 54°54'20" N and 69°09'58" E.

2. In paragraph 2(a)(i) [2(b)(i) in English-language text] of Section III and in paragraph 2(a)(i) [2(b)(i) in English-language

text] of Section IV of the Memorandum of Understanding, the geographic coordinates for the Barrikady Plant, Volgograd, should be 48°46'50" N and 44°35'44" E.

3. In paragraph 2(a)(i) [2(b)(i) in English-language text] of Section III of the Memorandum of Understanding, the Elimination Facility at Aral'sk with the coordinates 46°50' N and 61°18' E should be changed to the Elimination Facility at Kapustin Yar with the coordinates 48°46' N and 45°59' E.

Moreover, in the Protocol Regarding Inspections Relating to the INF Treaty, paragraph 7 of Section I regarding points of entry for the Union of Soviet Socialist Republics should read "Moscow or Ulan Ude."

EMBASSY OF THE
UNITED STATES OF AMERICA,
Moscow, May 21, 1988.

No. MFA/130/88.

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Union of Soviet Socialist Republics, and has the honor to refer to the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Elimination of their Intermediate-range and Shorter-range Missiles, with Memorandum of Understanding and Protocols (the Treaty), signed at Washington December 8, 1987.

The Embassy proposes that the corrections set forth in the attachment to this note be made in the text of the Treaty. The Embassy further proposes that this note and the Ministry's note in reply accepting the corrections shall constitute a correction of the text of the Treaty.

JOHN M. JOYCE,
Minister-Counselor.

ATTACHMENT TO NOTE NO. MFA/130/88

The following corrections should be made in the text of the Treaty:

1. In the Memorandum of Understanding (MOU) regarding the establishment of a data base for the Treaty, Section II, paragraph 1, concerning intermediate-range missiles and launchers, for the United States: the number of non-deployed missiles should read "226," the aggregate number of deployed and non-deployed missiles should read "695," and the aggregate number of second stages should read "238."

2. In the MOU, Section III, paragraph 1(A)(II), for missile operating base Wueschheim—the geographic coordinates should read, in the pertinent part, 007 25 40 E., and the number of launchers should read "21."

3. In the MOU, Section III, paragraph 2(A)(I), for launcher production facilities: Martin Marietta—the geographic coordinates should read, in the pertinent part, 39 19 N. For missile storage facilities: Pueblo Depot activity—the number of missiles should read "120"; Redstone Arsenal—the number of training missile stages should read "0"; Wellerbach—the number of missiles should read "9." For launcher storage facilities: Redstone Arsenal—the number of training missile stages should read "4." For launcher repair facilities: Redstone Arsenal—the number of training missile stages should read "20"; Ft. Sill—the number of launchers should read "1"; Pueblo Depot activity—the geographic coordinates should read, in the pertinent part, 38 17 N. For training facilities: Ft. Sill—the number of training missile stages should read "76."

4. In the MOU, Section IV, paragraph 2(A)(I), for missile production facilities: Longhorn Army Ammunition Plant—the number of missiles should read "8" and the number of training missile stages should read "1." For launcher production facilities: Martin Marietta—the geographic coordi-

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nates should read, in the pertinent part, 39 19 N. For missile storage facilities: Pueblo Depot activity—the number of missiles should read “162” and the number of training missile stages should read “63.” For missiles, launchers, and support equipment in transit the number of missiles should read “0” and the number of training missile stages should read “6.”

5. In the MOU, Section VI, paragraph 1(A)(IV) for the BGM 109G, the maximum diameter of the missile should read “0.52.”

6. In the MOU, Section VI, paragraph 1(B)(I), for the BGM 109G launcher the maximum length should read “10.80” and the maximum height should read “3.5.”

7. In the MOU, Section VI, paragraph 1(D)(I) for the BGM 109G launch canister the maximum length should read “6.97” and the maximum diameter should read “0.54.”

8. In the protocol regarding inspections, Section XI, paragraph 1, the reference to “paragraph 10 of Section VI of this protocol” should read “paragraph 11 of Section VI of this protocol.”

EMBASSY OF THE
UNITED STATES OF AMERICA,
Moscow, May 21, 1988.

No. MFA/131/88.

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Union of Soviet Socialist Republics, and has the honor to refer to the Ministry's note of May 21, 1988. On behalf of the Government of the United States of America, the Embassy accepts for information the items presented by the Soviet side, as set forth in the Ministry's note.

JOHN M. JOYCE,
Minister-Counselor.

VIENNA, May 21, 1988.

The Government of the United States of America refers to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles, signed at Washington, December 8, 1987, and proposes that the corrected site diagrams attached to this Note replace the respective site diagrams of the United States of America, as appended to the Memorandum of Understanding.

The Government of the United States of America further proposes that this Note shall constitute a correction to those site diagrams of the United States of America appended to the Memorandum of Understanding.

FRANK A. PARTLOW, JR.,
Brigadier General,
U.S. Army.

VIENNA, May 21, 1988.

The Government of the United States of America refers to the Note of the Government of the Union of Soviet Socialist Republics of May 21, 1988, and accepts for information the corrections presented by the Government of the Union of Soviet Socialist Republics to the respective site diagrams of the Union of Soviet Socialist Republics appended to the Memorandum of Understanding, as set forth in the aforesaid Note.

FRANK A. PARTLOW, JR.,
Brigadier General,
U.S. Army.

VIENNA, May 21, 1988.

The Government of the Union of Soviet Socialist Republics refers to the Treaty Between the Union of Soviet Socialist Republics and the United States of America on the Elimination of Their Intermediate-Range and Shorter-Range Missiles, signed at Washington on December 8, and proposes

that the corrected site diagrams attached to this Note replace the corresponding site diagrams appended by the Union of Soviet Socialist Republics to the Memorandum of Understanding.

The Government of the Union of Soviet Socialist Republics further proposes that this Note constitute a correction of the relevant site diagrams appended by the Union of Soviet Socialist Republics to the Memorandum of Understanding.

Attachments: As stated
Signature,
M.N. STREL'TSOV,
Chief Counsellor,
U.S.S.R. Ministry of Foreign Affairs.

VIENNA, May 21, 1988.

The Government of the Union of Soviet Socialist Republics refers to the Note of the Government of the United States of America of May 21, 1988, and takes note of the corrections submitted by the Government of the United States of America to the site diagrams appended by the United States of America to the Memorandum of Understanding, as set forth in the aforementioned Note.

Signature,
M.N. STREL'TSOV,
Chief Counsellor,
U.S.S.R. Ministry of Foreign Affairs.

Mr. HELMS. I thank the Chair, and I yield the floor.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. HELMS. Parliamentary inquiry. What is the matter before the Senate at this time?

The PRESIDING OFFICER. The matter before the Senate at this time is the amendment offered by the Senator from North Carolina, a second-degree amendment.

Mr. HELMS. And the time remaining?

The PRESIDING OFFICER. The Senator from North Carolina has remaining about 8 minutes. The Senator from Maine has 2 minutes.

Mr. WARNER. Mr. President, I wonder if the distinguished Senator from North Carolina would grant the distinguished Senator from Maine and myself such time as we may require to have a colloquy?

Mr. HELMS. I yield the remainder of my time to the Senator from Virginia to be controlled as he so desires.

Mr. WARNER. Mr. President, I yield to the Senator from Maine.

Mr. COHEN. I thank the Senator.

First, Mr. President, let me respond briefly to the comments made by my colleague from North Carolina. In my judgment, there has never been any assertion that this treaty is perfect. No one that I have listened to has indicated this is an absolutely perfectly crafted treaty. There is not a treaty perfectly crafted in existence, nor is there any piece of legislation ever adopted by this body or the other that is perfect in its provisions.

The notion that somehow it is flawed I think we would all concede. This treaty is flawed like other treaties are flawed, but, in my judgment, it is not fatally flawed, as the Senator from North Carolina has suggested.

It has also been suggested that every other Senator, save a few, have abdicated their senatorial responsibilities by simply joining or caving in to President Reagan's public relations excursion to Moscow—sort of a magical mystery tour that he is taking us all along with him on.

In my judgment, the Members, certainly those on the other side of the aisle, are not particularly interested in simply promoting President Reagan's public relations efforts. I believe they are equally dedicated, as the President and those of us on this side of the aisle who support this treaty are, to reducing a potential area of conflict and to try to reduce the size of our nuclear arsenals.

To suggest somehow everybody else in this Chamber simply wants to join a public relations campaign I think is not supported by the facts.

The third point I would make is that I serve on the Intelligence Committee along with Senator WARNER. He also serves on the Armed Services Committee, as do I, along with Senator NUNN and others. We have held hearing after hearing in the Intelligence Committee, the Armed Services Committee, and the Foreign Relations Committee. It is not as if this particular treaty has not been given very close scrutiny.

Indeed, there were deficiencies and flaws, and we tried to identify them and correct them. I believe we have done so. Speaking on behalf of myself, I feel I have carried out my obligations under the Constitution, and I certainly do not wish to accede to the notion that I and others have caved in and simply abdicated that measure of responsibility.

Now to the amendment, if I might address the Senator from Virginia, with whom I have prepared a colloquy. The Helms amendment is quite different from the underlying Nunn-Warner-Boren-Cohen amendment in that it refers to two exchanges of notes on technical matters. Such exchanges of technical corrections may continue, and quite possibly will continue, in the future. My understanding is that such future technical changes will not require the advice and consent of the Senate, nor will the regular data updates. Is that the understanding of the Senator from Virginia?

Mr. WARNER. Mr. President, the Senator from Maine is correct. The purpose of the Helms amendment is to give the full force and effect of the treaty to the note of May 21, 1988. Those notes constitute the corrected baseline in effect on which the Senate's advice and consent to the ratification of the treaty is based.

The regular data updates and further exchanges of technical corrections, as envisioned by the treaty, would not require the advice and consent of the Senate, although they would, of course, be provided to the Senate.

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Mr. COHEN. I thank the Senator from Virginia. Just to draw the distinction with the first-degree amendment, any changes to the diplomatic notes or the agreed minute referenced in the underlying Nunn-Warner-Boren-Cohen amendment would require the advice and consent of the Senate. As to the second-degree amendment, it requires notification, but not advice and consent. In this regard, I note that the authoritative testimony of Ambassador Glitman to the Armed Services Committee confirms that there can be no change in the substantive obligations under the treaty without the advice and consent of the Senate.

Mr. HELMS. Will the Senator yield on that point for just 30 seconds?

Mr. WARNER. Yes.

Mr. HELMS. Mr. President, in the interest of time, and I hope no interruption will be shown in this colloquy.

Mr. WARNER. In that case, let me indicate—

Mr. HELMS. I will finish in 20 seconds. I will ask unanimous consent that my comment about the colloquy appear immediately after that.

Mr. WARNER. Mr. President, while we have the distinguished Senator from North Carolina on the floor, is it this Senator's understanding that it would be the wish of the Senator from North Carolina or he would concur in the Senate voice voting the amendment in the second degree, and we would then have a rollcall vote on the underlying amendment as proposed by Mr. NUNN, myself, Mr. BOREN, Mr. COHEN, and Mr. HELMS?

Mr. COHEN. If the Senator will yield, what I am suggesting, I am willing to accept the second-degree amendment provided it is predicated upon the understanding that the Senator from Virginia and I have just established—that is, that technical changes in data information would not require advice and consent of the Senate; rather, they would require simply notice to the Senate. That is the basis on which I recommend we accept the second-degree amendment.

Mr. HELMS. If the Senator will yield.

Mr. WARNER. Mr. President, I yield to the Senator from North Carolina.

Mr. HELMS. For the purposes of legislative history to my response to the colloquy, let the record speak for itself in that regard.

Mr. WARNER. Mr. President, the Senator from Maine and I do not have the benefit of the knowledge of the response of the colloquy. I ask my colleague from Maine as to how we can answer his question?

Mr. COHEN. I suggest the basis for accepting, indeed endorsing, the second-degree amendment would be predicated upon the colloquy that the Senator from Virginia and the Senator from Maine have just had; notwithstanding any information put into the record inconsistent with that colloquy. My recommendation is that the repre-

sentations the Senator from Virginia and I have just made would be the basis for approval of the second-degree amendment.

Mr. WARNER. Mr. President, that is the understanding the Senator from Virginia proceeded on when he entered into colloquy. I note the presence on the floor of the Senator from North Carolina. It seems to me before we ask the Senate to voice vote this amendment, we should have some clarification.

Mr. HELMS. I want to hear the remainder of the colloquy. I did not realize I was yielding for that purpose.

Mr. WARNER. Mr. President, the colloquy that the Senator from Maine and I entered into was in accordance with a prepared text. My understanding is that text was prepared with the concurrence of the Senator from North Carolina. Then the Senator from Maine added another perspective to it. I leave it to the Senator from Maine to respond to his question. This Senator from Virginia has given the prepared text.

Mr. HELMS. All I am saying, if the Senator will yield.

Mr. WARNER. Yes.

Mr. HELMS. Is that the record ought to contain both sides. We are making legislative history here. I am perfectly content for the record, as it will stand, to be examined and whichever one of us are correct suits me fine.

Mr. COHEN. If the Senator will yield, I do not know what the other side referred to is. I do not know what the other colloquy is.

Mr. WARNER. Mr. President, I do not know what the other colloquy is. That is the dilemma we seem to be faced with. It seems to me before we ask the Senate to voice vote this matter, we ought to have some clarification. Does the Senator agree or disagree?

Mr. HELMS. Why not finish the colloquy?

Mr. WARNER. Mr. President, this Senator has finished the colloquy. Has the Senator from Maine finished?

Mr. COHEN. I have completed my statement.

Mr. WARNER. The Senators from Maine and Virginia have completed their statements.

Mr. HELMS. Mr. President, how much time remains?

The PRESIDING OFFICER (Mr. SHELBY). Two and a half minutes.

Mr. HELMS. Two and a half. Mr. President, I ask unanimous consent that it be in order for me to suggest the absence of a quorum so that we can work this whole matter out even if it takes 3 or 4 minutes in addition to the 2½ minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I thank the Chair. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will now call the roll.

The bill clerk proceeded to call the roll.

Mr. PELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PELL. Mr. President, I rise merely to congratulate Senators NUNN, WARNER, BOREN, COHEN, and HELMS on this amendment.

It grew out of a conversation yesterday morning, and there is a general agreement that the three different viewpoints that were represented here, three different thoughts could be integrated into a single amendment. They worked hard at it and it is being done. I think it is a good piece of work, and it has helped move along the whole concept of the treaty. It is an example, too, of where our colleagues try to see what can be done in a positive way, rather than examining what is wrong in a negative way. For that reason, I know that this amendment will pass in very fine form. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Rhode Island controls the only time left. The Senator from Rhode Island has approximately 10 minutes left.

Mr. PELL. Mr. President, I yield to the Senator from North Carolina as much time as he wants.

Mr. HELMS. Mr. President, Two minutes on the outside.

The PRESIDING OFFICER. The Senator is recognized for 2 minutes.

Mr. HELMS. I thank the Chair. I thank the distinguished Senator from Rhode Island.

Mr. President, I simply wanted to add my own comments at the end of the colloquy between the distinguished Senator from Maine and the distinguished Senator from Virginia. We have consulted about this because I think it is an important point. I think they agree.

Mr. President, I would like to follow the earlier colloquy between the two Senators in the Record because it is legislative history of equal weight and significance.

The other side is that the colloquy may not, of course, overturn the Constitution of the United States. The treaty text may not be changed after the Senate has given its advice and consent in terms of domestic law, not even for so-called technical modifications. Senator COHEN is going to note certain delegations in just a moment. However, for purposes of international law, so-called minor, nonsubstantive, purely technical corrections are made

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on occasion by the exchange of notes or other methods.

The Senate, in the judgment of this Senator, and I believe all Senators, must zealously guard its duty and its prerogatives to ensure that these provisions of international law do not become loopholes by the Constitution and the role of the Senate in making treaties which could be thereby subverted.

That is the end of my contribution to the colloquy.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island has the time.

Mr. PELL. Mr. President, I yield such time as he may desire to the Senator from Virginia.

Mr. WARNER. Thank you, Mr. President.

Mr. President, I yield such time to the Senator from Maine as he may require.

Mr. COHEN. I thank the Senator from Virginia.

Mr. President, let me say there is no other side to the colloquy. There can be no two sides or any difference in interpretation of what we are trying to establish. Otherwise, there is no agreement, and it would force a vote on the measure. There is one understanding, and I believe it has been correctly stated by the Senator from Virginia, the Senator from Maine, and the Senator from North Carolina as to one colloquy, as such. They are not in contradiction. It is correct to say that the treaty text may not be changed without the advice and consent of the Senate. That is categorical, and there is no disagreement.

But as the Armed Services Committee pointed out on page 25 of its report, the section "Amendment to the protocols":

Once the Treaty enters into force, amendments to the Treaty can be made only with the consent of the Senate (Articles XVI and XVII). However, the protocols permit changes without a treaty amendment on "such measures as may be necessary to improve the viability and effectiveness" of the Protocols.

I ask unanimous consent that the full text of the Armed Services Committee report's section "Amendments to the protocols" be printed in the RECORD at this time.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

11. AMENDMENTS TO THE PROTOCOLS

Amendments to the INF Treaty generally require the advice and consent of the Senate, but certain changes may be made in the Protocols without the Senate's consent. At the Committee's hearings, questions were raised as to what types of changes could be made without the approval of the Senate.

Once the Treaty enters into force, amendments to the Treaty can be made only with the consent of the Senate (Articles XVI and XVII). However, the Protocols permit changes without a treaty amendment on "such measures as may be necessary to improve the viability and effectiveness" of the

Protocols. The Article-by-Article Analysis describes such modifications to the Protocols as "technical changes."

At the Committee's hearing on February 23, 1988, Ambassador Glitman assured the Committee that the procedure for such technical changes applies only to the Protocols and cannot be used to alter any other provision of the Treaty.

With respect to changes in the Protocols, he was asked to describe the difference between a "technical" change (i.e., one that can be accomplished without the Senate's consent) and other changes to the Protocols (which require an amendment to the Protocols and the Senate's consent). He responded: "The question is [whether] you have changed a substantive obligation under the Treaty, and such a change under the Treaty would clearly require an amendment." He added: "We are going to have to work with the * * * the Congress to ensure in the future that if there are changes, Congress will know that they are on their way and that they are either technical or a major obligatory change." He confirmed that changes made without the consent of the Senate would be reported to Congress under the Case Act.

Ambassador Glitman assured the Committee that, with the exception of "technical" modifications to the Protocols, the Executive Branch, without the approval of the Senate, cannot modify the Protocols or adopt a meaning for any provision of the Treaty in a manner that is contrary to or inconsistent with the meaning of the Treaty as presented to the Senate.

RECOMMENDATION

In light of Ambassador Glitman's assurances to the Committee and the statements in the Article-by-Article Analysis, the Committee sees no need to recommend an understanding to the Resolution of Ratification clarifying protocol amendment procedures.

Mr. WARNER. Mr. President, this Senator has the understanding that three Senators who participated in this colloquy have a "common understanding," as we use that phrase.

Mr. HELMS. And have stated a common understanding in our own vernacular. I ask unanimous consent to include in the RECORD at this point an exchange between myself with Secretary Shultz and Ambassador Glitman.

There being no objection, the exchange was ordered to be printed in the RECORD, as follows:

EXCERPTS FROM MARCH 16, 1988, FOREIGN RELATIONS HEARING WITH SECRETARY SHULTZ
Senator HELMS. * * * I want to talk to you, if I may, about some legal concerns.

Article 13, paragraph 1B provides that the Special Verification Commission will be able to "agree upon such measures as may be necessary to improve the viability and the effectiveness of this treaty."

Now, it is not clear to me and maybe to others who have accepted this treaty from the outset, some of them before they even looked at it, how the U.S. representatives could do that unilaterally. Maybe you could clear that up.

Why would such improvements not be subject to submission to this Senate for approval?

Secretary SHULTZ. I would like to ask Ambassador Glitman to give you the negotiating background for why that is there and what it means.

Ambassador GLITMAN. Well, briefly, Senator, the answer to your question is there is no reason why it need not be brought to the

Senate for approval if the measure which has been agreed upon between the United States and the Soviet Union at the executive branch level.

Senator HELMS. I think we may be getting somewhere. Go ahead.

Ambassador GLITMAN. All I am saying is if that measure were to change the substantive obligations of the treaty, then it would also require article 16, which is the amendment article, to take effect.

If it is a technical difference, and we have talked about that, I think, in one of the other committees, where you may want to change a measuring device, for example, or you come up with a new means of communication which we did not foresee, that would be the sort of thing that could be done without requiring formal amendment.

But we are also aware of the Case Act provisions, which require us to notify the Congress.

Senator HELMS. But do you see the quagmire you are moving into? I was going to bring up article 16, which talks about substantive amendments.

The question came to my mind, Who is going to determine whether a modification is merely a technical improvement or a substantive change? Who will make that judgment?

Ambassador GLITMAN. I think we will want to cooperate with the Senate on that matter. That is why we would have to notify the Senate of any type of change.

In the case of an agreement that was a very technical change, we would want to come to this committee and the proper organs of this body, of this Senate, and let them know what we have in mind.

FINAL INF QUESTIONS FOR THE RECORD

Mr. HELMS. Mr. President, Secretary of State Schultz promised, in open session at the final, unprecedented joint committee INF hearing on May 16, 1988, that he would answer all questions for the record. I have just today received the answers to my May 16 questions for the record and I ask unanimous consent that these questions and answers be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COMMITTEE ON FOREIGN RELATIONS,

Washington, DC, May 16, 1988.

HON. GEORGE SHULTZ,
Secretary of State, Department of State,
Washington, DC.

DEAR MR. SECRETARY: We are deeply concerned about whether there has been final resolution of several important remaining issues relating to the proposed INF Treaty. Accordingly, we request that all of the questions in the attached unclassified and classified sets of questions for the record resulting from the unprecedented joint hearing today of the Senate Committee on Foreign Relations, Committee on Armed Services, and Select Committee on Intelligence, be answered as soon as possible.

We fully appreciate the Administration's strong desire that the Senate give its advice and consent for the President to ratify this Treaty at the impending Moscow meeting. We believe, however, that all of these questions should be answered before debate begins on the Senate Floor.

Sincerely,

JESSE HELMS,
GORDON HUMPHREY.

May 26, 1988

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FINAL INF VERIFICATION QUESTIONS—
UNCLASSIFIED

1. In January, 1988, the State Department spokesman stated in answer to questions from Congressman Kemp about INF Treaty data discrepancies that there were no data discrepancies, and that the State Department was fully satisfied with the accuracy and completeness of the Soviet-supplied missile data and photographs.

State Department spokesman Redmond stated on January 6, 1988:

"We have no reason to doubt the accuracy or the authenticity of the SS-20 photograph or any of the others." (Emphasis added.)

Moreover, in answer to my January 12, 1988 letter, on February 5, 1988, the State Department stated:

"... we have no basis to charge the Soviet Union with failure to provide the data required by the Treaty... the U.S. government has no basis to believe that the photograph of the SS-23 missile stage is inaccurate... There is no inconsistency between the interagency assessment of the SS-23 photograph and the public statements of the State Department regarding that photograph."

But at the same time the State Department was denying these Soviet data discrepancies, it was secretly negotiating with the Soviets, trying to get the Soviets to correct them by furnishing new data and photographs. Now, however, the State Department is finally requiring the Soviets to furnish additional photographs of their SS-4, SS-12, SS-23, and SS-20, showing the front sections and connecting sections, after all. Moreover, the Soviets have also finally corrected the length of their SS-23 first stage after all.

[The May 12, 1988 Glitman-Chervov note states: "The sides will exchange additional photographs no later than May 15, 1988... For the Soviet side, these photographs will be the SS-23, SS-12, and SS-4 with their front sections attached, and of the front section of the SS-20... The length of the SS-23 missile stage will be changed, in a corrigendum to the Memorandum of Understanding, to 4.56 meters."]

QUESTIONS

(a) Why did the State Department deny to Congress that the Soviet data was inaccurate, precisely when the State Department was negotiating with the Soviets to correct these inaccuracies?

(b) How do you explain the inconsistency in the State Department position?

(c) Because the INF Treaty Memorandum of Understanding on Data states that each side is responsible for the accuracy of its own data, why was the State Department attempting to cover-up the now-confirmed inaccuracies in the Soviet data?

(d) Was it appropriate for the State Department to be the advocate of the accuracy of Soviet data now confirmed to be inaccurate?

2. The May 12, 1988 Glitman-Chervov note, point #1, refers to paragraph 7 of Section VII of the INF Treaty Inspection Protocol. This paragraph states that:

"... Inspectors shall have the right to inspect the entire inspection site, including the interior of structures, containers or vehicles, or including covered objects, whose dimensions are equal to or greater than the dimensions specified in Section VI of the Memorandum of Understanding for the missiles, stages of such missiles, launchers or support equipment of the inspected Party." (Emphasis added.)

The stage lengths for the SS-20 in Section VI of the MOU are 8.58 meters for the first stage and 4.60 meters for the second stage.

The May 12, 1988 Glitman-Chervov note in point No. 1 specifies that for "baseline, close-out, and short-notice inspections, the Parties will be inspecting... for the USSR—the first stage of the SS-12 missile, the stage of the SS-23 missile, the SSC-X-4 cruise missile, and the SS-4 launch stand."

The SS-20 first and second stages are not mentioned as inspectable items in the new note, yet the proposed INF Treaty clearly allows the U.S. to inspect for the SS-20 first and second stages at all inspectable sites. Indeed, the MOU clearly recognizes the importance of SS-20 stages, because the MOU states that the Soviets have "650 second stages" for intermediate range missiles, the exact number of Soviet-declared deployed and non-deployed SS-20 missiles, also implying the right to inspect SS-20 second stages.

QUESTION

Why at the last moment did the U.S. agree to delete the crucially important right to inspect for SS-20 stages, when the INF Treaty gives the U.S. this vital right?

3. Section IX, paragraph 11 and 12, of the Protocol on Inspection states that the U.S. can weigh and measure: "any shipment exiting through the portal specified in paragraph 1 of this Section [i.e. at Votkinsk] which is large enough and heavy enough to contain an intermediate range GLBM or longest stage of such a GLBM of the inspected Party." (Emphasis added.)

Yet the May 12, 1988 Glitman-Chervov note states in point No. 4: "In the context of this assurance, the United States will not be inspecting any shipment whose dimensions are less than those of an SS-20 launch canister as listed in the Memorandum of Understanding." (Emphasis added.) The length of the SS-20 longest stage—its first stage—is 8.58 meters, and the length of the SS-20 canister listed in the MOU is 19.32 meters. Thus the U.S. has given up the right to inspect any object shorter than 19.32 meters.

QUESTIONS

(a) Why did the U.S. give up the right, clearly specified in detail in the proposed INF Treaty, to inspect SS-20 first stages?

(b) Using this last-minute U.S. concessions, can the Soviets legally bring SS-20 first and second stages separately through the Votkinsk portal, for assembly elsewhere, completely destroying the purpose of the highly touted portal inspections?

(c) Can the Soviets thus continue to produce SS-20s under the proposed INF Treaty after all, despite the State Department's claims that the Treaty prevents this?

4. The May 12, 1988 Soviet note on futuristics, apparently initialed by Soviet negotiator Viktor Karpov, is from the "Government of the Union of Soviet Socialist Republics." Yet the proposed INF Treaty itself was signed by Mikhail Gorbachev, who listed himself as "General Secretary of the Communist Party of the Soviet Union."

QUESTIONS

(a) How can you explain the addition of notes from the Soviet Government to a proposed Treaty signed by the leader of the Party?

(b) Is the State Department recognizing the Soviet Government or the Soviet Communist Party as representing the USSR, or both?

(c) Why did the State Department fail to ask Gorbachev to provide documentation for any plenipotentiary powers he may have had to sign the proposed INF Treaty, as is required under international law and Soviet laws?

5. The MOU gives the Soviet SS-5 missile's length, with front section, as 24.30 meters. Yet the Soviet photograph of the SS-5 supplied before the Treaty was signed

does not show its front section. The Soviets are being required to furnish photographs of the front sections of all their INF missiles except the SS-5. The State Department's February 5, 1988 answer to my January 12, 1988 letter states: "The Parties are under an obligation to provide photographs of Treaty-limited items."

QUESTION

Why will no photograph of an SS-5 with front section be required, if the Soviets are required to eliminate this missile with front section, and are providing photographs of the front sections of all their other INF missiles?

6. The Senate has learned of the following documents which should be integral parts of the proposed INF Treaty:

- (a) Corrigendum note as of January 15, 1988;
- (b) Dubinin note of May 8, 1988, Secret;
- (c) Kampelman—"V K" and/or Kampelman-Karpov note on futuristics, May 12, 1988;
- (d) Glitman-Chervov note on verification, May 12, 1988;
- (e) Glitman letter to Chervov on FRG Pershing 1As, May 12, 1988, Secret;
- (f) Additional photographs to be added to MOU—
 - SS-4 with front section;
 - SS-12 with front section;
 - SS-23 with front section;
 - SS-20 front section.

QUESTIONS

(a) When will we receive copies of each of these documents?

(b) Should they be incorporated into the Treaty?

(c) If not, what is their status, and what should the Senate do with them?

(d) Will the additional 40 verification issues still under negotiation with the Soviets be reported to the Senate promptly?

U.S. DEPARTMENT OF STATE,
Washington, DC.

Hon. JESSE HELMS,
U.S. Senate.

DEAR SENATOR HELMS: I have been requested to respond to your and Senator Humphrey's 16 May letter to the Secretary concerning questions inter alia about results from the 11-12 May Ministerial and aspects of the Soviet SS-N-19 cruise missile. Our answers to these questions are attached. As requested, the answers to your first six questions are unclassified; the answers to the second six questions are classified "Secret." A copy of this material has been sent to Senator Humphrey.

Sincerely,

J. EDWARD FOX,
Assistant Secretary,
Legislative Affairs.

U.S. DEPARTMENT OF STATE,
Washington, DC.

Hon. GORDON J. HUMPHREY,
U.S. Senate.

DEAR SENATOR HUMPHREY: I have been requested to respond to your and Senator Helms' 16 May letter to the Secretary concerning questions inter alia about results from the 11-12 May Ministerial and aspects of the Soviet SS-N-19 cruise missile. Our answers to these questions are attached. As requested, the answers to your first six questions are unclassified; the answers to the second six questions are classified

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"Secret." A copy has been sent to Senator Helms.

Sincerely,

J. EDWARD FOX,
Assistant Secretary,
Legislative Affairs.

1. In January, 1988, the State Department spokesman stated in answer to questions from Congressman Kemp about INF Treaty data discrepancies that there were no data discrepancies, and that the State Department was fully satisfied with the accuracy and completeness of the Soviet-supplied missile data and photographs.

State Department spokesman Redmond stated on January 6, 1988:

"We have no reason to doubt the accuracy or the authenticity of the SS-20 photograph or any of the others." (Emphasis added.)

Moreover, in answer to my January 12, 1988 letter, on February 5, 1988, the State Department stated:

"... we have no basis to charge the Soviet Union with failure to provide the data required by the Treaty... the U.S. Government has no basis to believe that the photograph of the SS-23 missile stage is inaccurate... There is no inconsistency between the interagency assessment of the SS-23 photograph and the public statements of the State Department regarding that photograph."

But at the same time the State Department was denying these Soviet data discrepancies, it was secretly negotiating with the Soviets, trying to get the Soviets to correct them by furnishing new data and photographs. Now, however, the State Department is finally requiring the Soviets to furnish additional photographs of their SS-4, SS-12, SS-23, and SS-20, showing the front sections and connecting sections, after all. Moreover, the Soviets have also finally corrected the length of their SS-23 first stage after all.

(The May 12, 1988 Glitman-Chervov note states: "The sides will exchange additional photographs no later than May 15, 1988... For the Soviet side, these photographs will be of the SS-23, SS-12, and SS-4 with their front sections attached, and of the front section of the SS-20... The length of the SS-23 missile stage will be changed, in a corrigendum to the Memorandum of Understanding, to 4.56 meters.")

1a. Why did the State Department deny to Congress that the Soviet data was inaccurate, precisely when the State Department was negotiating with the Soviets to correct these inaccuracies?

1b. How do you explain the inconsistency in the State Department position?

1c. Because the INF Treaty Memorandum of Understanding on Data states that each side is responsible for the accuracy of its own data, why was the State Department attempting to cover-up the now-confirmed inaccuracies in the Soviet data?

1d. Was it appropriate for the State Department to be the advocate of the accuracy of the Soviet data now confirmed to be inaccurate?

We had no basis in January, and have no basis now, to charge that the Soviet-provided photograph of the SS-23 missile stage was not accurate or authentic. Our discussion of this matter with the Soviets was based on the fact that SS-23 photograph depicted the missile stage without a front section. Comparing the length of the stage in the photograph to the length provided in the MOU, it was apparent to us that MOU length included a connector. Nothing in the Treaty or the negotiations specified whether photographs or MOU data should include

connectors. We told the Soviets, after reviewing the photographs and data, that we preferred a photograph of the missile with its front section, and that the MOU length for the SS-23 missile stage should exclude the connector. The Soviets have now agreed with us that the appropriate length for the SS-23 missile stage without connector is 4.56 meters.

We also have had no basis for charging that the other Soviet-provided photographs were inaccurate or inauthentic. We did raise with the Soviets the fact that the photographs of their ballistic missiles depicted missiles without their front sections. In subsequent discussions, the Soviets agreed to provide the additional photographs, and they have done so. The Soviets stated that the photographs we had provided of our ballistic missiles had not included measuring scales and we agreed to provide them. The two sides exchanged photographs on May 15, 1988.

Both sides have also exchanged corrigenda to the MOU.

2. The May 12, 1988 Glitman-Chervov note, point #1, refers to paragraph 7 of Section VII of the INF Treaty Inspection Protocol. This paragraph states that:

"... inspectors shall have the right to inspect the entire inspection site, including the interior of structures, containers or vehicles, or including covered objects, whose dimensions are equal to or greater than the dimensions specified in Section VI of the Memorandum of Understanding for the missiles, stages of such missiles, launchers or support equipment of the inspected Party." (Emphasis added.)

The stage lengths for the SS-20 in Section VI of the MOU are 8.58 meters for the first stage and 4.60 meters for the second stage.

The May 12, 1988 Glitman-Chervov note in point #1 specifies that for "baseline, close-out, and short-notice inspections, the Parties will be inspecting... for the USSR—the first stage of the SS-12 missile, the stage of the SS-23 missile, the SSC-X-4 cruise missile, and the SS-4 launch stand."

The SS-20 first and second stages are not mentioned as inspectable items in the new note, yet the proposed INF Treaty clearly allows the U.S. to inspect for the SS-20 first and second stages at all inspectable sites. Indeed, the MOU clearly recognizes the importance of SS-20 stages, because the MOU states that the Soviets have "650 second stages" for intermediate range missiles, the exact number of Soviet-declared deployed and non-deployed SS-20 missiles, also implying the right to inspect SS-20 second stages.

Why at the last moment did the U.S. agree to delete the crucially important right to inspect for SS-20 stages, when the INF Treaty gives the U.S. this vital right?

The U.S. did not "delete" the right to inspect for SS-20 stages. Your citation of the May 12, 1988 agreed minute left out a particularly relevant passage. The May 12, 1988 agreed minute specifies that the "Parties will be inspecting the entire inspection site, including the interior of structures, containers or vehicles, or including covered objects, capable of containing (emphasis added)... for the USSR, the first stages of the SS-12 missile, the stage of the SS-23 missile, * * *

This passage means that these items are the smallest Treaty-limited items for which the U.S. can inspect. SS-20 stages are larger than these items and we, therefore, can inspect for them as well.

3b. Using this last-minute U.S. concession, can the Soviets legally bring SS-20 first and second stages separately through the Votkinsk portal, for assembly elsewhere, completely destroying the purpose of the highly touted portal inspections?

3b. There was no U.S. concession with respect to our rights set forth in the Treaty. Votkinsk is a missile final assembly facility where missile stages manufactured elsewhere are mated. The portal monitoring system at Votkinsk enables us to verify that assembled SS-20s are not exiting this facility. We have, moreover, obtained an additional assurance that the Soviet Union will not ship from Votkinsk anything "whose dimensions are equal to or greater than the dimensions of the SS-20 missile without its front section but less than the dimensions of an SS-20 launch canister, as those dimensions are listed in the Memorandum of Understanding".

3c. Can the Soviets thus continue to produce SS-20s under the proposed INF Treaty after all, despite the State Department's claims that the Treaty prevents this?

3c. Article VI of the Treaty clearly bans the production of SS-20s. Thus, any production of SS-20s after entry into force would be a Treaty violation. If the Soviets attempted to assemble SS-20s outside of Votkinsk, they would face a significant risk of detection by U.S. intelligence. Moreover, if the production of some number of SS-20s did escape detection, the military utility of these missiles would be questionable at best, since the Soviets could not qualify their new assembly line by flight-testing the missiles with significant risk of being detected.

4. The May 12, 1988 Soviet note on futuristics, apparently initialed by Soviet negotiator Viktor (sic) Karpov, is from the "Government of the Union of Soviet Socialist Republics." Yet the proposed INF Treaty itself was signed by Mikhail Gorbachev, who listed himself as "General Secretary of the Communist Party of the Soviet Union."

4a. How can you explain the addition of notes from the Soviet Government to a proposed Treaty signed by the leader of the Party?

4b. Is the State Department recognizing the Soviet Government or the Soviet Communist Party as representing the USSR, or both?

4c. Why did the State Department fail to ask Gorbachev to provide documentation for any plenipotentiary powers he may have had to sign the proposed INF Treaty, as is required under international law and Soviet law?

4a-c. Under international law, a person has authority to sign a Treaty if it appears from the circumstances that it was the intention of the state involved that he represent it for that purpose. This is true even if he has not been issued full powers, or does not occupy a formal governmental position. No rule of international law requires any particular form of evidence of a foreign leader's power to sign a treaty.

Article 7(1) of the Vienna Convention, which in our view accurately reflects relevant customary international law, states that:

A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:

(a) he produces appropriate full powers; or

(b) it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.

In accordance with this rule, it is not the practice of the United States to demand full powers where the circumstances indicate that the person signing a treaty does in fact represent his government, as was the case

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with Gorbachev's signature of the INF Treaty on behalf of the Soviet Union. There is no doubt about the authority of General Secretary Gorbachev, a man who has dealt regularly and authoritatively with the President of the United States, to sign the Treaty. Gorbachev clearly determines the foreign policy of the Soviet Union, and regularly deals on behalf of the Soviet Union with foreign heads of state and foreign ministers. The U.S. Government has no doubt about Gorbachev's authority.

The many high-ranking Soviet governmental officials present at the Washington Summit (including the Foreign Minister) clearly accepted Mr. Gorbachev's authority to represent the Soviet Union and to sign the Treaty. Moreover, since the Treaty was signed the governmental authorities in Moscow have made clear by their conduct that they accept the validity of Gorbachev's signature on behalf of the Soviet government. The Supreme Soviet has carried on its deliberations on the Treaty, with no suggestion whatsoever that Mr. Gorbachev acted without authority.

Earlier this month, Secretary Shultz discussed the implementation of the Treaty with the Soviet Foreign Minister, who undeniably has authority to commit the Soviet Union for these purposes. These exchanges could only have taken place on the assumption that the Treaty had been validly signed. As an outcome of those exchanges, Soviet officials signed two agreements that were expressly based on the Treaty, whose validity the agreements assumed.

The General Secretary of the Communist Party of the Soviet Union obviously occupies a much different position than the officials of political parties in Western countries. The General Secretary currently has the predominant governing authority in Soviet Society, and international law in no way precludes this. In any event, ratification of the Treaty by the Soviet parliament will remove any possible further questions on this point.

5. The MOU gives the Soviet SS-5 missile's length, with front section, as 24.03 meters. Yet the Soviet photograph of the SS-5 supplied before the Treaty was signed does not show its front section. The Soviets are being required to furnish photographs of the front sections of all their INF missiles except the SS-5. The State Department's February 5, 1988 answer to my January 12, 1988 letter states: The Parties are under an obligation to provide photographs of Treaty-limited items."

Why will no photograph of an SS-5 with front section be required, if the Soviets are required to eliminate this missile with front section, and are providing photographs of the front sections of all their other INF missiles?

In the data in the MOU, the Soviets informed us that they have six non deployed SS-5's in their inventory. They also informed us that none of these missiles have front sections. Given these facts, the Soviets are not required to, and indeed have no SS-5 front sections, to eliminate.

6. The Senate has learned of the following documents which should be integral parts of the INF Treaty:

a. Corrigendum note as of January 15, 1988;

b. Dubinin note of May 8, 1988, "Secret";

c. Kampelman—"V K" and/or Kampelman-Karpov note on futuristics, May 12, 1988;

d. Glitman-Chervov note on verification, May 12, 1988, SECRET;

e. Glitman letter to Chervov on FRG Pershing 1 As, May 12, 1988, "Secret";

f. Additional photographs to be added to U—

SS-4 with front section; SS-12 with front section; SS-23 with front section; and SS-20 front section.

6a. When will we receive copies of each of these documents?

6b. Should they be incorporated into the Treaty?

6c. If not, what is their status, and what should the Senate do with them?

Regarding the document referred to in "a." above, we advised the Soviets shortly after Treaty signature, of several technical and typographical errors in the Memorandum of Understanding and Inspection Protocol. Such errors can be readily corrected by the Parties in accordance with international treaty law and standard practice, and these corrections have been made in accordance with that law and practice. The exchange of notes effecting these corrections has been completed and is being transmitted to the Senate. This is a matter that in no way affects the substance of the Treaty and thus should have no significance for the Senate's deliberations and decision on the Treaty.

Document b. (Dubinin note of May 8, 1988) was a preliminary communication on verification issues. It had no independent legal status. Whatever substance it contained has now been superseded by the May 12, 1988 agreed minute on verification issues, discussed immediately below.

Documents c. (the Kampelman-Karpov exchange of notes on futuristics) and d. (the Glitman-Chervov agreed minute on verification issues) constitute legally binding common understandings of the signatories' obligations under the INF Treaty. As their substantive relationship to the Treaty is clear, formally incorporating these documents into the Treaty is unnecessary. As international agreements related to the INF Treaty, they have been provided to the Senate for its information in acting on that Treaty. These documents, along with document e. (the Glitman letter to Chervov on FRG Pershing 1As), which has no independent legal status but merely provides certain information to the Soviet Union in the context of the agreed minute, have been provided to the Committee on Foreign Relations, the Committee on Armed Services, and the Select Committee on Intelligence.

The photographs to be added to the MOU, mentioned in f. above, will be provided to the Senate shortly. As photographs appended to the MOU pursuant to its Section VI, they form part of the Treaty and will be transmitted for inclusion in the official text that is now before the Senate.

6d. Will the additional 40 verification issues still under negotiation with the Soviets be reported to the Senate promptly?

We will report promptly on outstanding implementation questions on a regular basis.

Mr. WARNER. Mr. President, unless other Senators desire a rollcall vote on the amendment in the second degree, I would now ask that the Senate proceed to vote on the amendment in the second degree.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. PELL. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the amendment offered by the Senator from North Carolina.

The amendment (No. 2303) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HELMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now occurs on the first-degree amendment, as amended.

Mr. WARNER. Mr. President, it is the understanding of this Senator that the leadership wishes to have a quorum call at this time for the purpose of notifying Senators.

Mr. PELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the first-degree amendment, as amended. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Hawaii Mr. MATSUNAGA is necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

Mr. SIMPSON. I announced that the Senator from Kansas [Mrs. KASSEBAUM] and the Senator from Pennsylvania [Mr. SPECTER] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 157 Ex.]

YEAS—96

Adams	Garn	Moynihan
Armstrong	Glenn	Murkowski
Baucus	Gore	Nickles
Bentsen	Graham	Nunn
Bingaman	Gramm	Packwood
Bond	Grassley	Pell
Boren	Harkin	Pressler
Boschwitz	Hatch	Proxmire
Bradley	Hatfield	Pryor
Breaux	Hecht	Quayle
Bumpers	Heflin	Reid
Burdick	Heinz	Riegle
Byrd	Helms	Rockefeller
Chafee	Hollings	Roth
Chiles	Humphrey	Rudman
Cochran	Inouye	Sanford
Cohen	Johnston	Sarbanes
Conrad	Karnes	Sasser
Cranston	Kasten	Shelby
D'Amato	Kennedy	Simon
Danforth	Kerry	Simpson
Daschle	Lautenberg	Stafford
DeConcini	Leahy	Stennis
Dixon	Levin	Stevens
Dodd	Lugar	Symms
Dole	McCaIn	Thurmond
Domenici	McClure	Trible
Durenberger	McConnell	Wallop
Evans	Melcher	Warner
Exon	Metzenbaum	Weicker
Ford	Mikulski	Wilson
Fowler	Mitchell	Wirth

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NAYS—
NOT VOTING—4Biden
KassebaumMatsunaga
Specter

So the amendment (No. 2302), as amended, was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote by which the amendment, as amended, was agreed to.

Mr. LUGAR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BYRD. Mr. President, I ask unanimous consent that I may yield to the Senator from Virginia with my floor rights protected.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, I thank the distinguished majority leader.

Mr. President, I just wish to thank all Senators who participated in working on this amendment and the many staff members that did so.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I thank the distinguished Senator.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2305

Mr. BYRD. Mr. President, I withdraw my amendment No. 2296 and send an amendment to the desk. I have a right to do that since no action has been taken on the amendment.

The PRESIDING OFFICER. The Senator has that right. The amendment is withdrawn. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 2305.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment is as follows:

Strike all after the word "provided", and insert in lieu thereof the following: "that the Senate's advice and consent to ratification of the INF Treaty is subject to the condition, based on the Treaty Clauses of the Constitution, that—

"(1) the United States shall interpret the Treaty in accordance with the common understanding of the Treaty shared by the President and the Senate at the time the Senate gave its advice and consent to ratification;

"(2) such common understanding is based on:

"(A) First, the text of the Treaty and the provisions of this resolution of ratification; and

"(B) Second, the authoritative representations which were provided by the President and his representatives to the Senate and its Committees, in seeking Senate consent to ratification, insofar as such representations were directed to the meaning and legal effect of the text of the Treaty; and

"(3) the United States shall not agree to or adopt an interpretation different from that common understanding except pursuant to Senate advice and consent to a subsequent treaty or protocol, or the enactment of a statute; and

"(4) if, subsequent to ratification of the Treaty, a question arises as to the interpretation of a provision of the Treaty on which no common understanding was reached in accordance with paragraph (2), that provision shall be interpreted in accordance with applicable United States law."

Mr. BYRD. Mr. President, discussions have been underway including the distinguished Republican leader, the managers of the bill, and other Senators who have been principals in the discussions heretofore, and I think that we are ready to propose an agreement.

TIME LIMITATION AGREEMENT

Mr. BYRD. Mr. President, I ask unanimous consent that there be 4 hours on the overall Biden and Byrd amendments to be equally divided in accordance with the usual form and that at the conclusion of the 4 hours the vote occur on the Byrd amendment to be followed immediately with a vote on the committee amendment, as amended, if amended, without further intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. HOLLINGS. May I have 20 minutes within that 4 hours?

Mr. BYRD. And I ask unanimous consent that there be an additional 20 minutes to be under the control of Mr. HOLLINGS.

Mr. HOLLINGS. Make it 4 hours and 20 minutes, or however.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. BYRD. Mr. President, I thank all Senators.

Now, Mr. President, I ask unanimous consent that rule XXII, as it pertains to the cloture motion, be waived until the final disposition of the order.

Mr. DOLE. Will the majority leader yield?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. I wonder if, following the disposition of this amendment, we might agree at this time to take up the amendment of the Senator from North Carolina. He, as I understand it, is ready to go.

I just say, the Senator from North Carolina is prepared with an hour equally divided, and I understand there may be an objection. Hopefully, we have worked that out.

Mr. CRANSTON. I object at this time to such an agreement. I may not

object later. I am referring only to the Helms amendment.

Mr. DOLE. Can I further inquire of the majority leader if, during this 4-hour interim period, we are able to put together the UC on remaining amendments, I assume we could interrupt and not charge the time against either side to get that agreement.

Mr. BYRD. I ask unanimous consent that upon the disposition of the pending committee amendment and the amendment in the second degree, the majority leader again be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I yield the floor and thank all Senators.

The PRESIDING OFFICER. Who yields time?

Mr. LUGAR. Mr. President, I suggest the absence of a quorum with the time to be equally divided.

The PRESIDING OFFICER. On whose time?

Mr. LUGAR. To be equally divided between the proponents and the opponents.

The PRESIDING OFFICER. The Chair reminds the Senator from Indiana that that time is now controlled by three Senators.

The majority leader.

Mr. BYRD. Mr. President, I ask unanimous consent that the time be divided equally without prejudice to the time that is under the control of Mr. HOLLINGS.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. MIKULSKI). Without objection, it is so ordered.

Mr. BYRD. Madam President, may we have order in the Senate?

The PRESIDING OFFICER. The majority leader is correct. The Senate is not in order. Will Senators in the well please take their seats or retire for further conversations?

Mr. BYRD. Madam President, this time is running on my time, and I ask that there be order in the Senate. I hope that Senators will listen to the Chair. This Senator will insist on order in the Senate.

Madam President, I yield to the distinguished Republican leader.

Mr. DOLE. I thank the majority leader. I want to designate in opposition to the amendment the Senator from California, Senator WILSON.

Mr. BYRD. Madam President, I thank the Chair and I thank all Senators. I know that Senators were trying to resolve another amendment, and compliment them on that. I am full understanding of that. It is just the time is running, and I want to get with this amendment. I yield myself such time as I may require.

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TREATY INTERPRETATION AMENDMENT

Madam President, the amendment I am offering is intended to clarify and strengthen the Senate's rightful and constitutional role in the approval of treaties. The dispute over the proper interpretation of provisions of the ABM Treaty has thrown a cloud of uncertainty over the definitive meaning of the provisions of a treaty which has been approved by the Senate. This amendment intends to make it crystal clear that common understandings reached by the Senate and the executive branch in the course of the Senate deliberations, and investigations in connection with its advice and consent to the ratification of a treaty, bind any future Presidents. The Senate consents to the ratification of a treaty only on the understanding that the President will interpret a treaty and implement a treaty, in good faith conformity to the meaning arrived at by the Senate, as a result of its deliberations.

Certain administration officials have challenged the role of the Senate in the treaty-making process, and declared that the administration has the right to interpret and implement the provisions of a treaty in a manner inconsistent with that shared by the Senate and the President, through his representatives, when it gave its advice and consent. To accept this proposition would make a mockery of the entire Senate process, and in fact it would reduce the constitutional role of the Senate to a mere nullity. The consent of the Senate would be reduced to a clerical function. This is not what the framers of our Constitution envisioned.

This amendment intends to bind the President, as a condition of Senate approval to his implementing this treaty, to the interpretation understood by this body of the meaning of the provisions of the treaty. If the President does not agree to the common understandings developed in the process of examining the text his negotiators developed, and in the process of the committee's examination of his representatives and their testimony on the treaty, then the President ought not to exchange the instruments of ratification. By his act of exchanging the instruments of ratification, the President is bound by the common understandings developed in the Senate by his representatives. The President and the Senate, through this process entered into a solemn constitutional contract. This amendment does not break any new legal ground. It does not create any new constitutional roles or duties, nor could it, it merely restates what I believe is the current law and the current responsibilities of the two branches regarding the treaty-making power. It would not have been necessary had not a challenge been mounted to that constitutional arrangement. I regard it as a critically important amendment for this body. I regard this amendment as going to the heart of

one of the most important powers that the framers of our Constitution gave to the Senate. A proper resolution of this dispute is of great significance.

The amendment states that the President shall interpret this treaty in accordance with the common understanding, shared by the Senate, that prevails at the time the Senate gave its advice and consent to the ratification. It states further that this common understanding is based on the text of the treaty, any reservations or understandings which the Senate may attach to the resolution of ratification, and on the authoritative testimony of executive branch officials concerning the meaning and legal effect of the treaty. The amendment then states, clearly and explicitly, that no subsequent interpretation of this treaty which is inconsistent with this shared understanding shall be permitted, unless the Senate has participated through the passage of a subsequent treaty or protocol on the enactment of a statute.

Mr. President, the amendment addresses the rules of the game when a common understanding between the two branches has been reached. There can be times when, after the resolution of ratification has been approved, a matter arises about which no interpretation was available and no common understanding was reached. Under those circumstances—and I expect that if both sides do their job well, those will be rare circumstances—then paragraph 4 of my amendment provides that the disputed provision shall be interpreted in accordance with applicable United States law. Those instances then would be outside of the rules pertaining to common understandings which are embodied in clauses 1, 2 and 3 of the amendment. We would not be dealing with a reinterpretation of a common understanding. That is where the problem has heretofore arisen. Instead, we would be dealing with a first interpretation of a case which arose after the consent had been given. The distinguished Senator from Maine, Mr. COHEN, is to be commended for fashioning this provision and I think it fills a necessary GAP in my original formulation in which others participated with me, and I think it is an important contribution to the amendment.

The position which the Senate adopts through the passage of this amendment is based on sound constitutional logic. There is no need to restate that logic as part of the condition, but the Senate is clearly acting in accordance with the treaty clause of the constitution—article II, section 2, clause 2—and in accordance with the powers of the Senate in the making of treaties. The amendment emphasizes this point by reference to the constituting language.

The amendment I offer has the same intent as the amendment proposed by the committee on foreign re-

lations, but I believe that in consideration of the hours that have gone into its formulation and the bipartisan efforts, the time involved and the application of the energies and talents of Senators on both sides of the aisle, it is more focused, specific, and precise. It prevents the President from acting unilaterally in a way inconsistent with the meaning of the treaty as understood by both the Senate and the President. There should be no ambiguity about this.

Why is it important to attach this condition at this time?

Once the Senate has concluded its action on this resolution and has given its advice and consent to ratification, the treaty becomes the law of the land. A treaty becomes law unlike other laws—the House of Representatives does not participate, the President does not have the opportunity to veto, and mistakes are not easily corrected by subsequent legislation. A treaty is thus quite different, in the context of the law of the land, from a bill which becomes a law.

For these reasons, the Senate spends considerable time studying the treaty, holding extensive hearings, examining all issues carefully, and, ultimately, approving the resolution of ratification by a two-thirds vote of those Senators present. Three committees of this Senate, composed of nearly half of the membership of this Senate, conducted what has probably been as exhaustive and responsible a scrutiny as of any treaty that has come before this body in our Nation's history. I believe this process has produced a better treaty, and the committees are to be commended for their diligence. In this process. We examine the text of the treaty very carefully. We rely upon executive branch officials to testify as to the meaning of the treaty.

The testimony of these officials as to the meaning of the treaty is authoritative, and any inconsistencies or problems should be detected by the committees or the executive branch and clarified prior to final action by the Senate.

As we all know, several problems were discovered in the course of examination of this treaty, and they did require the negotiation of diplomatic notes and agreements to clear them up.

All of this contributes to what the Senate and the administration understand to be the legal meaning and effect of the treaty.

After all of this, if any administration comes along later and attempts to change the interpretation of the treaty, then that future administration is determining for itself what should be the law of the land.

The Senate's approval of the treaty is based on the proposition that the President will act in good faith to implement the treaty in accord with the common understandings of its terms when that approval was given. If the

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administration decides later, after the instruments have been exchanged, that it does not like those understandings and decides to interpret the treaty differently, then it breaks the constitutional contract. The Senate, in reaching its decision, based that decision on the testimony and on the record that was made before it in duly constituted hearings, has no opportunity at that time to give its advice and consent to the reinterpretation of that treaty.

That is why it is necessary at this time to state clearly and irrevocably that the Senate insists on its rights and its duty under the Constitution to bind the President to the interpretation of the treaty which the Senate accepted at the time it gave its advice and consent to ratification.

Madam President, in closing I want to thank the chairmen of the three committees: First, the chairman of the Foreign Relations Committee, which has jurisdiction over the treaty, Senator PELL. I also want to thank the other members of that committee. I thank the ranking member even though he was opposed to the treaty. I thank Mr. LUGAR and others on that committee. And I thank Senator BIDEN, who is not present today, but I express deep appreciation to the members of that committee for the dedicated attention that they gave to the treaty, the hearings, the markup, and the application of their not inconsiderable talent in the work that was performed in reporting the treaty to the floor.

I also thank Senator NUNN, Senator BOREN, and Senators WARNER and COHEN, chairmen and ranking members of the Armed Services Committee and the Intelligence Committee, for the extraordinary probative diligence that they exemplified in examining the treaties. They were highly instrumental in bringing about actions that will have resulted in an improvement of the treaty, actions which did result in renegotiations of the areas of the treaty that emerged as problem areas. And I compliment the administration on its recognition that those problems had to be addressed. Some of those were problems that had not been even discussed during the negotiations on the treaty.

Others were areas which had not been thoroughly gone into. But the administration worked fast and effectively in bringing the Soviets to agree in such ways that we feel that the problems have been not only properly addressed but have also been taken care of.

So, Madam President, I thank all of these Senators and their staffs. The staffs on both sides of the aisle have been most, most helpful. And I personally want to thank Senator BAKER for the excellent contributions that he has made, and even those who oppose the treaty are to be thanked, too. After all, they make a great contribution as well. We cannot all agree on ev-

everything. But those who oppose certainly render a service because oftentimes they bring about the focusing of minds of a given area, and as a result final actions are affected.

Madam President, I am ready to yield the floor, and I reserve the remainder of my time.

Mr. WILSON. Madam President, will the distinguished majority leader yield for a question on the time of the opposition?

Mr. BYRD. Yes.

Mr. WILSON. I thank my friend the majority leader.

Before I ask the question, if I may be indulged for this personal observation, I think the majority leader is to be commended. The substitute amendment that he has offered seeks in two important ways to address what I think were problems with the Biden-Pell amendment as it was originally drafted and presented.

This is indeed a substitute for it, but the essential distinctions are really, I think he would agree, as follows: That in terms of defining the common understandings between the President and the Senate at the time that advice and consent of the Senate is given, that common understanding is based not only on the text of the treaty and the authoritative representations made by the President and his designees, but under Byrd substitute there has been added to that definition of common understanding "the provisions of this resolution of ratification."

Second, there is a change in the Byrd amendment offered as paragraph 4 to it which states that it, subsequent to ratification of the treaty, a question arises as to the interpretation of a provision of the treaty on which no common understanding was reached in accordance with paragraph 2, that being the paragraph that defines common understanding, then that provisions shall be interpreted in accordance with the applicable U.S. law.

Those are the two essential changes and they are important changes. The first change, that being the addition by the majority leader of the provisions of this resolution of ratification, means that the common understanding upon which future interpretation of this INF Treaty will be based will include those conditions which the Senate adds during this very process now of ratification.

That is a very important addition. The original Biden-Pell amendment lacked those. So what it has done is allow the Senate to make a very substantive contribution to the treaty in terms of the conditions, those that are purely binding upon the United States, and those which, as we shall see, may in fact bind the Soviet Union are additions to what was negotiated by our negotiators in Geneva.

Second, paragraph 4, which speaks to a time subsequent to ratification and the circumstance of a question arising, has two interpretations to

which there was no common understanding given at the time of advice and consent, is an effort by the majority leader and Senator COHEN to try to deal with those situations, as I understand, it where there was an omission not detected at the time of ratification but discovered only subsequent, and to deal with those situations where there is in fact a conflict discovered as between witnesses representing the administration in the making of those so-called authoritative representations.

I commend Senator COHEN and the majority leader for the effort to deal with that problem because it is a real problem. In my judgment, it does not go far enough for the reason that it fails to deal with the situation in which we discover that there is an inconsistency between a so-called authoritative representation, and not other conflicting testimony by another administration witness but rather the negotiating record, the very situation which, indeed, we dealt with last year at great length in terms of the debate as to whether the broad or narrow was the correct legal interpretation of the ABM Treaty.

Having prefaced my question with that, and I thank the majority leader for his graciousness and patience, my question is this: During the negotiations to which the majority leader referred in his remarks, which occurred last night, there were repeated efforts by the majority leader, by Senator NUNN, by Senator WARNER, by Senator COHEN to make a point which was that the Byrd amendment does not seek to dispose of the debate on the broad and narrow interpretation of the ABM Treaty. Rather, I gather that it is the opinion of the sponsor that the Byrd amendment leaves that particular question unresolved. It does not seek to settle the question.

Mr. BYRD. The Senator is preeminently correct.

Mr. WILSON. I thank the majority leader.

I think that is correct—that it does not. I point out that the language that has been chosen in the Byrd amendment speaks to the INF Treaty. It states that the Senate's advice and consent to ratification of the INF Treaty is subject to the condition and does not purport to speak to any other treaty—not the ABM Treaty, not a future treaty, but simply to the INF Treaty.

Is that a correct interpretation?

Mr. BYRD. Mr. President, I am not interested in fighting or refighting the battle concerning the ABM Treaty; but I am interested in establishing clearly the standard by which we all ought to be guided in connection with the making and the interpretation of treaties.

The Senate has a clearcut, vital role in the making of treaties, by virtue of the "advice and consent" which gives. I believe that the language th-

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has been carefully crafted here establishes that standard, and it in no way, in my judgment, is intended to deal with the ABM Treaty dispute.

It seems to me we have established here what the Senate's proper role is and clearly established that if there is a shared understanding between the Senate and the administration at the time the Senate gives its advice and consent, then that clear understanding—that common understanding, I should say, that shared understanding—there should be no doubts about that, because there has been a meeting of the minds on that.

Consequently, no President should come along later and try to reinterpret that; because if that were to occur then, what good, what benefit is derived, in the interests of the United States and the American people, by the Senate's giving its advice and consent? Its advice and consent is a mere matter of form in that event.

The constitutional framers did not intend for the words "advice and consent" to be symbolic. They meant for those words to be substantive, to have meaning. This amendment establishes and provides that there will be no reinterpretation after the Senate and Executive both agree, through a shared understanding, as to what the treaty means—that there be no reinterpretation without further action and approval by the Senate thereof.

As to the common understanding to which the Senator referred, the amendment, of course, sets forth what that common understanding is based on. As the Senator has correctly pointed out, the Resolution of Ratification is a vital part of the common understanding as evidence of what that common understanding is.

Mr. WILSON. I thank the majority leader.

I simply point out, Madam President, that the inclusion of the provisions of the Resolution of Ratification within the definition of the basis for common understanding between the President and the Senate is of considerable importance as it relates to the interpretation of the INF Treaty; because what occurred during the process leading to the present debate on the floor of the Senate was, without question, the most thorough analysis in the history of any treaty considered by the Senate of the United States. The number of hearings, the length of hearings, the hours of testimony, the fact that for the first time in the history of the U.S. Senate, the Senate had before it not only the authoritative representations of the administration, but also the negotiating history, or the negotiating record, gave to the Senate the opportunity which it had never before had, to actually compare for consistency those authoritative representations and the actual record of the negotiation as it took place in Geneva.

Admittedly, that negotiating record not contain instructions from the

U.S. Government to its negotiators. It did not contain their responses to instructions received. But it did contain those things which were the common history, known to both sides, to the Soviets and to the American negotiators at Geneva. Therefore, all that provides the proper basis in international law for that kind of frame of reference necessary to explain what may occur as ambiguities in the face of the text, and indeed ambiguities did occur. There were clearly some omissions.

We have dealt this morning with one of the most serious. In the debate that occurred this morning on the so-called omnibus amendment, the question of futures as it related to the definition of weapons delivery systems was discussed at considerable length, as it should have been. The point, very simply, was that in the course of negotiations, a representation was made which was not clear at the time. In fact, as a result of the lack of clarity, which was discovered in the course of hearings by the Armed Services Committee of the U.S. Senate, there was necessity to resort to the negotiating record.

The negotiating record, in that instance, disclosed that there was not a clear understanding at Geneva. We, in turn, negotiated the exchange of letters between the Governments of the United States and the Soviet Union, which led to this morning's action, which incorporates into the record—and, really, by incorporating by reference makes a part of the Resolution of Ratification—the letters exchanged between our Governments, in which there was agreement noted as to the proper definition of what constitutes a weapons delivery system precluded under the terms of this arms control agreement affecting intermediate range ballistic missiles and intermediate ground-launched cruise missiles.

That is of great significance, and I think the Senate is to be congratulated, as I said earlier, on the thoroughness with which it has examined the record of this treaty—going through the representations made by a variety of administration witnesses, comparing those representations with the negotiating record.

We had another instance, discussed at some length about two afternoons ago, that had to do with the awkward language, the unclear language, the double-negative situation, that is found in the express language of article VI, paragraph 2. What was necessary there, in order to cure that, was to resort to the negotiating record, where we found that the United States representative, Ambassador Glitman, was asked by his Soviet counterparts to bring them a statement from the United States Government that made clear their right to proceed with the construction of a missile system as a part of their offensive inventory.

And the statement which the Soviets sought was furnished by our Government. The Soviets had earlier sought to change the language. For reasons that we need not repeat here, the American negotiators rejected the repeated entreaties of the Soviets to change the language to rid it of the confusing double negative to give it a clarity which in fact it does not have on the face of the treaty text.

That clarification was gained only by that subsequent statement which was inserted in the negotiating record and which thereby has become a part of the record of ratification in terms of the debate on the treaty and now on the Resolution of Ratification.

The resort to the negotiating record in both cases has made it possible for the Senate to solve what were obvious problems, certainly problems in terms of the potential conflict they might generate had they been left unresolved.

For that reason, I think the Senate and those Members specifically involved in the resolution of these two issues are to be congratulated upon a job not only well done but I would argue much better done than by any preceding Senate considering any preceding treaty.

What we have before us now in the Byrd amendment as a substitute to Biden-Pell is an effort to address a portion of the question how shall the Senate conduct itself with respect to this treaty after ratification? And what the Byrd substitute prescribes is conduct by the President of the United States because it states that the Senate's advice and consent to ratification, which is a duty required of us by the U.S. Constitution, is based upon certain expressed conditions, and the condition is that the United States shall interpret the treaty in accordance with the common understanding shared by the President and the Senate at the time that the Senate gave its advice and consent to ratification.

To the extent that the Byrd substitute has added important qualifications to the Biden-Pell amendment, which it has now replaced, or will replace if it is approved by the Senate, it is a distinct improvement. The question for those of us here is whether or not it goes far enough.

What I would argue, Madam President, is that it deals with a portion of the question how shall the Senate conduct itself in the future, but it really deals with the conduct of the President of the United States and future Presidents. It does not specifically address or prescribe a course of conduct for the Senate apart from stating that the Senate and the President shall interpret the treaty in accordance with the common understanding.

The question that arises and that is not answered by the Byrd amendment is this: If the United States shall interpret the treaty in accordance with the

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common understanding in existence at the time that the Senate gives its advice and consent, is that condition and that common understanding governing of obligations that are purely domestic, or does it also seek to govern and define those obligations of the United States internationally, which is to say those obligations that are imposed by the treaty itself rather than by a unilateral condition added to the Resolution of Ratification by the Senate?

The important distinction, Madam President, is this, and I think it is obvious to anyone who has spent the first 2 weeks in a first-year law school class on contract law, there cannot be terms added to an agreement that bind both parties to it unless both parties agree. There is in that case no meeting of the minds. It is perfectly possible for one of the parties unilaterally to assume an obligation not imposed upon him or her by the agreement in which case it is binding upon the person assuming that obligation but not the other party to the contract, or, in this instance, the other party to the treaty.

It is possible, in short, for the United States Senate to adopt a condition whereby we impose upon the United States obligations which are not shared by nor imposed by the treaty upon the Soviet Union. We can do that. There is no question that as a matter of domestic law we are in a position to bind ourselves in any way that we choose so long as there is an adequate vote of the Senate to enact such a prescription but that prescription unilaterally imposed upon ourselves does not bind the Soviet Union, not unless or until they have specifically expressly agreed to it.

And that is the question that is left unanswered by the Byrd amendment. There is no question that the Byrd amendment prescribes obligations of the United States in terms of our domestic law. But the question unanswered is, Does it impose upon the United States an obligation under international law that is not matched by any corresponding obligation of the Soviet Union?

I would argue—and I think that the proponents of this amendment would agree—that what this does, clearly, is prescribe a course of conduct for the executive branch in future and it prescribes a condition to which the Senate will in future attempt to hold the executive branch. It does not, however, prescribe a course of conduct on the part of the Senate with respect to what it shall do in future with respect to another treaty. I think that is a significant point.

The majority leader has left his post here upon the floor to consult. But what I would ask of the majority leader at such time as he is able to respond on the time of the opposition is whether or not he agrees that there is nothing in the amendment that he has proposed that would preclude the Senate when it discovers as it did in

this case of this INF Treaty from clearing up ambiguity by resort to the negotiating record.

Indeed, I see my friend, the distinguished Senator from Michigan, on the floor. I would ask if he would be kind enough to respond to that question and in fairness, since he has just come upon the floor, let me state to him that both the majority leader and I have made reference in opening comments to the negotiations that took place last evening in his office.

I have made the comment that representations were made at that time by the Senator from Michigan, the majority leader, the Senator from Georgia, the Senator from Maine, and others, seeking to provide reassurance that this one leaves unresolved the debate on the legally correct interpretation of the ABM Treaty.

The majority leader has responded in the affirmative to that question.

The question that I would ask now to the Senator from Michigan or to the majority leader, is it not also true that we agreed last night that there is nothing in the Byrd amendment that would preclude the Senate from having resort to the negotiating record to clarify omissions or ambiguities as indeed we did in the two instances that I have cited here?

Mr. LEVIN. I would answer at least on my part that resort to the negotiating record is not precluded by this amendment. I also would comment, since my friend from California raised the issue relative to the AMB Treaty, that the principles which are set forth in the Byrd amendment, indeed the Biden amendment as well, apply to all treaties.

Mr. WILSON. I am constrained to point out to my friend—

Mr. LEVIN. But if I could finish my sentence, I think the second half will give my friend more comfort than the first half.

Mr. WILSON. That is true, and I am compelled to point out why and, that is, because it is a variance not only with the earlier response of the majority leader but it is also at variance with the repeated reassurances received last night that the language of the Byrd substitute to the Biden-Pell amendment—and I am emphasizing that we are discussing now what is before us, the Byrd substitute, not the Biden-Pell for which it has been substituted—was not intended to resolve the debate on the ABM Treaty.

Mr. LEVIN. The second half of my sentence, I think, will give you some comfort in that regard.

Mr. WILSON. I beg your pardon, I did not realize I had interrupted you.

Mr. LEVIN. As I indicated, the principles set forth in this amendment apply to all treaties. That is why we fought so hard to keep the words in this amendment "the treaty clauses of the Constitution."

There was a big battle over those words, whether they would be in or out. Those that believe very strongly

in this amendment insisted that those words be kept in, because we believe these principles apply to all treaties.

The reason that this amendment does not resolve the ABM dispute, however—and it is not intended to resolve the ABM dispute—is because the proponents of the broad interpretation of the ABM Treaty have argued that there was, at a minimum, ambiguity in the representations which were made to the Senate at the time of that ratification debate.

Therefore, the proponents of the broad interpretation of the ABM Treaty are free to argue that there was no authoritative representation provided by the President to the Senate relative to the question of futuristics at the time of the ABM Treaty ratification debate. That is the reason why the explicit language of paragraph 4 of the Byrd amendment is helpful to you as well, because that makes it clear that if a question arises as to the interpretation of a provision of the treaty on which no common understanding was reached—to wit: to which there was no authoritative representation provided to the Senate by the Executive—that then the provision shall be interpreted in accordance with applicable U.S. law.

The proponents of the broad interpretation of the ABM Treaty believe and have argued that there was no authoritative representation provided by the President relative to that issue. Those of us who have supported the narrow or traditional view of the ABM Treaty have argued that indeed there was authoritative representation made by the President relative to that issue.

But that issue is not resolved. The issue simply is not resolved because, again, you are free to argue there was no authoritative representation and those of us who believe in the traditional interpretation of ABM are free to argue that there was authoritative representation that was made.

So, in that important sense, the ABM issue is not intended to be resolved by this language—I do want to give you a clear answer to your question—nor does this language in any way imply the opposite relative to the ABM Treaty interpretation issue.

It was clear in the report language—and I think here my friend would concur with me—it was clear in the report language, and it is clear from the sponsors of this amendment, that the absence of this language during the ABM debate was not intended to imply anything relative to the correct interpretation of the issue in the ABM debate. And that is the other reason why we insisted that the language "treaty clauses of the Constitution" remains, and that is a very important part of this amendment.

The principles of this amendment apply to every treaty, including the ABM Treaty, but the application of the principles is where there is no resolution because of the difference as

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whether or not there was authoritative representation or not.

Mr. WILSON. I thank my friend from Michigan. But let me ask him a further question about paragraph 4. Though he was not the author of the paragraph, I think he is competent to respond as an able advocate and a craftsman with the language whose skills I admire. Is it, in your judgment, a correct statement that paragraph 4, by seeking to prescribe a solution to those situations that arise subsequent to ratification where there is a question as to interpretation upon which there was no common understanding, is a first step, but does not totally resolve how we should proceed in instances where there is no agreement that there was no common understanding?

Mr. LEVIN. Where there is disagreement as to whether there was a common understanding or not, or, to put it more precisely, where there is a disagreement as to whether or not there were "authoritative representations which were provided by the President and his representatives to the Senate and its committees, in seeking Senate consent to ratification," then the parties are free to take their best position. The people who claim there was no authoritative representation are then going to argue paragraph 4 applies. The Senators or others who believe that there were authoritative representations provided by the President will argue that paragraph 2 applies.

Mr. WILSON. So, in short, my friend from Michigan thinks paragraph 4 is descriptive of the situation in which the Senate found itself last year when we devoted considerable time and eloquence—at least that was our view of it—to this question of the legally correct interpretation of the ABM Treaty and have come to no resolution.

I look at paragraph 4 and it seems to me it describes that irresolution. It states that if there is agreement that there was no common understanding, or acknowledged that something has come up which was totally omitted, where there is agreement that there was no common understanding, this prescribes that there shall be a determination made in accordance with applicable United States law. But in the situation where there is not an agreement that there was no common understanding and rather one side is contending that there was common understanding and the other contends that indeed there was not, then we have the present impasse as it relates to the ABM Treaty's legally correct interpretation.

Mr. LEVIN. I would not agree with that formulation.

Mr. WILSON. Well, how do you get the point without there being agreement that there was no common understanding?

Mr. LEVIN. If there is no agreement as to whether there is a common un-

derstanding, the parties that believe there was are free to argue that there was under paragraph 2. The parties that feel that there was no common understanding—to wit: that there was no authoritative representation provided by the President—are free to argue paragraph 4.

But I could not agree with your formulation that if there is no agreement as to whether or not there was a common understanding, then paragraph 4 applies. Quite the opposite.

Mr. WILSON. No. No. I think my friend misunderstood. My criticism of paragraph 4—which I recognize to be an effort by the majority leader and Senator COHEN and others to try to give resolution in that situation subsequent to ratification where it is agreed that there was no common understanding—does not deal with the situation that presently exists with regard to the ABM Treaty where there is in fact no agreement about there having been common understanding.

So I think the point is adequately made. Paragraph 4 is somewhat useful in a very limited application. It will assist in those situations where there is a common acknowledgment, where there is no dispute that something has come up, either as a conflict in the testimony of authoritative representations or simply an omission. In those situations where there is no dispute, where it is agreed that there was no common understanding, paragraph 4 is useful.

Mr. LEVIN. I agree with that.

Mr. WILSON. But in another situation, it does not deal with that question, the question that is before us with respect to the ABM Treaty.

Mr. LEVIN. It does not solve the dispute.

Mr. WILSON. I thank my friend.

Madam President, how much time remains to the opposition?

The PRESIDING OFFICER. Three minutes and—excuse me. I was reading the eight as a zero.

Eighty-three minutes and 23 seconds.

Mr. WILSON. I thank the Chair. Your first response, I confess, struck chill into my heart.

The PRESIDING OFFICER. The Chair apologizes.

Mr. WILSON. Madam President, I would reserve the balance of my time.

Mr. BYRD. Madam President, I yield to the distinguished Senator 10 minutes of my time if that would be of assistance to him.

We have chewed up a good bit of his time in responding to questions on his time.

Mr. WILSON. Madam President, I thank the majority leader for his customary graciousness and generosity and gratefully accept the 10 minutes.

Mr. BYRD. Mr. President, against whom is time running at this point?

The PRESIDING OFFICER (Mr. ADAMS). The Chair will say to the majority leader, time is running equally.

Mr. BYRD. I hope the time will not run equally against Mr. HOLLINGS, who will be in control of 20 minutes.

I ask unanimous consent that Mr. HOLLINGS retain his 20 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. And I ask unanimous consent that throughout the remainder of the debate on these amendments—"these" meaning the first- and second-degree amendments—that where it runs equally it not be charged in any way against Mr. HOLLINGS' 20 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, in the interest of utilizing our time to the very best advantage on both sides I wonder if any Senators on my side of the question wish to have time at this point so that we are not atrophying. Does Mr. PELL or Mr. NUNN or does Mr. LEVIN or does Mr. SARBANES or does anyone wish time from my side?

Mr. President, I yield 5 minutes to Mr. PELL.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for 5 minutes.

Mr. PELL. I thank the majority leader and compliment him on the way he has worked on the Biden amendment and improved the Biden amendment—Biden condition, I should say, rather.

I would also be remiss if we did not pay tribute to Senator BIDEN. Perhaps he is watching this debate in his room, where is recuperating at home in Delaware. I hope he is. I know we all join in wishing him Godspeed.

In any case, these hours on the Senate floor are really the result of his imagination and depth of thought in trying to handle the problem that we face.

Because the issue addressed by the Biden condition and the Byrd amendment is not a struggle over who interprets treaties. It is the President's responsibility to interpret and implement treaties for the United States. At issue is the question of what limits are to govern the President's latitude in exercising that power.

The Foreign Relations Committee amendment and the Byrd amendment confirm that authoritative representations by the executive branch do indeed have binding significance. The President's representatives simply cannot explain a treaty to the Senate in one way prior to ratification and then seek to change that explanation 10 years later without the approval of the Senate. The Foreign Relations Committee amendment and the Byrd amendment prevents such as action.

The issue before the Senate is not the broad versus the narrow interpretation of the ABM Treaty. The issue is the Sofaer doctrine, which essentially allows the President to reinterpret a treaty unilaterally. The Byrd amend-

ment and the committee amendment prevent reinterpretations. However, to reject the validity of reinterpretations is not to resolve the ABM Treaty dispute, but simply to narrow that dispute to a debate over the facts of what actually transpired in 1972.

I hope the Senate does not digress on this question into a replay of the ABM Treaty dispute. The real issue is whether the Senate will reject the notion that the Executive can reinterpret a treaty. Heretofore, nobody suggested that the Executive could reinterpret a treaty.

I urge my colleagues to support the Biden amendment as amended by Senator BYRD. A vote for this amendment is a vote to uphold the Senate's treaty power under the Constitution and to reestablish the principle that a President cannot walk away from the shared understanding between the Executive and the Senate reached at the time of a treaty's ratification. This notion is central to the Senate's role in the Constitution and I hope this amendment passes through bipartisan support.

I would add that at any time in the future if an Executive wanted to reinterpret a treaty, he would probably try to engage in the same practice: Find a lawyer who would invent the doctrine and redo it. This is what lawyers are very often hired for, to give the interpretation that their client wishes.

So, even with the passage of this amendment, it does not mean that another President, another year, another decade, might not attempt the same legerdemain. But I would add that I think the passage of this amendment as amended would make that more difficult.

Mr. President, I ask unanimous consent that there be printed in the RECORD the portion of the committee report which deals with the issue of treaty interpretation.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

IX. TREATY INTERPRETATION (CONDITION ADOPTED BY THE COMMITTEE)

While intent on opposing any unnecessary encumbrance on the resolution of ratification, the Committee felt compelled to address the issue of treaty interpretation. As Senator Cranston put it, the Committee acted on this issue "by necessity, not by choice." The Committee did so by approving a formal Condition which affirms certain constitutional principles relating to the Treaty Power, and requires that these principles govern U.S. interpretation of the INF Treaty.

Some Senators questioned the Committee's need to act on the treaty interpretation issue, particularly in the context of a treaty that will mandate a relatively prompt three-year dismantlement of intermediate-range missiles. Is interpretation of the INF Treaty really an issue? The Committee's answer is affirmative, for three reasons:

First, the issue is indeed relevant to the INF Treaty. While involving a three-year missile elimination phase, the INF Treaty is designed to ban a defined class of missiles permanently. Thus, the Treaty's limitations and prohibitions will entail the complexities

of interpretation and implementation over a period of unlimited duration.

Second, the issue can hardly be avoided. The Committee could not sidestep the fundamental constitutional question raised by the Administration's recent promulgation of an extraordinary doctrine which asserts wide presidential latitude for changing the interpretation of a treaty, notwithstanding what the Senate may have been told in consenting to ratification. To ignore this question, while dealing with a major treaty, could imply acquiescence in the doctrine.

Third, the inclusion of a Condition on treaty interpretation represented the least problematic means of handling a potentially grave problem for the INF Treaty. In the absence of a Condition reaffirming traditional principles of treaty interpretation—under which the Senate can accept Executive explanations as having binding significance—the Senate would face the alternative of considering countless other Conditions designed to formalize the Senate's understanding of various INF Treaty provisions.

A. THE TREATY POWER

The Constitution's Treaty Clause (Article II, section 2, clause 2) states that the President "shall have Power, by and with the Advice and Consent of the Senate, to make treaties, provided two-thirds of the Senators present concur." Because treaties constitute solemn international commitments of the United States, and hold domestic status as "supreme Law of the Land," the Senate's shared role in the Treaty Power is a central constitutional provision. As such, it represents a principal means by which the Senate participates in the shaping of American foreign policy.

In the words of Alexander Hamilton, the Framers of the Constitution considered the division of the Treaty Power between the Executive and the Senate to be "one of the best digested and most unexceptional parts of the plan." It would have been "utterly unsafe and improper," Hamilton wrote, to entrust the power of making treaties in the President alone. Hamilton's most famous dictum applied directly to the Treaty Power:

The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind as those which concern its intercourse with the rest of the world to the sole disposal of a magistrate, created and circumstanced, as would be a president of the United States.

The essence of the Treaty Power is that the President and the Senate are partners in the process by which the United States enters into international obligations. It is fundamental to the logic of the Treaty Clause that it does not envisage that the President may unilaterally re-make a treaty. If he could, the Senate's portion of the shared power inherent in the Treaty Clause would be nullified.

B. ORIGINS OF THE ISSUE

Last year, in seeking to justify the Administration's "broad" interpretation of the 1972 ABM Treaty, the State Department Legal Adviser, Mr. Sofaer, advanced two claims—one factual, the other constitutional:

(1) The factual claim is that the entire ABM Treaty, in design, genesis, and implementation, was fraught with ambiguity; ambiguity in what the negotiators agreed to, ambiguity in the text they produced, ambiguity in the Executive presentation to the Senate, ambiguity in the Senate's understanding of the Treaty, and ambiguity in the subsequent practice of the parties.

(2) The constitutional claim is that what the Senate is told in the process of consenting to a treaty is not in itself of binding significance in determining the President's obligation in carrying out the treaty.

The constitutional claim was manifest in a number of statements made by Mr. Sofaer, but none more crystallized the issue for Senators than this assertion, made during joint Foreign Relations-Judiciary Committee hearings in early 1987: "When [the Senate] gives its advice and consent to a treaty, it is to the treaty that was made, irrespective of the explanation [the Senate] was provided." Questioning how a treaty could be "made" prior to the Senate's consent, Senators grew increasingly concerned about the Administration's concept of the Treaty Power.

In 1987, the Foreign Relations Committee devoted considerable time and attention to the ABM Treaty dispute in both of these dimensions: factual and constitutional.¹³ Having done so, the Committee found no reason, while considering the INF Treaty, to debate again the overall validity of the Administration's assertion of a "broad" interpretation of the ABM Treaty as opposed to the traditional "narrow" interpretation. Indeed, in the Committee's view, that issue is being adequately addressed elsewhere:

First, as to U.S. defense policy, in pursuing the development and testing of ABM systems, that issue is now being addressed through the 'normal give-and-take of the U.S. defense budget process. By means of an amendment to the FY 1988-89 DoD authorization, Congress has employed the power of the purse to assert its views, and similar amendments in the future will succeed or fail on the basis of policy debate.

Second, and even more to the point, it has become patently clear that what is permitted by the ABM Treaty will ultimately be decided by *superpower negotiation*. Such negotiation is virtually inevitable—and the need for it is now part of the Reagan Administration's own position—because the United States, as a precondition of agreeing to major reductions in strategic offensive arms, will be required by self interest to achieve its own clear and detailed understanding of which kinds of Soviet ABM systems to anticipate in the future strategic environment. Any Treaty amendment would, of course, be subject to Senate advice and consent.

In sum, the future of U.S. policy with regard to ABM systems, and U.S. participation in the ABM Treaty, will be addressed in the budget process and in negotiations with the Soviet Union. The Committee was unanimous in believing that its action on the INF Treaty required no resolution of the "broad-versus-narrow" ABM Treaty debate.

The one legacy of that debate which the Committee could not overlook, however, was the Administration's *constitutional* assertion of a clearly delineated and unprecedented doctrine under which the President has wide latitude for treaty "reinterpretations," notwithstanding what the Senate may have been told in the course of granting consent to ratification. The Committee

¹³ For the Foreign Relations Committee's actions and views with regard to the overall ABM Treaty dispute, see the Committee's March-April 1987 joint hearings with the Judiciary Committee, entitled "The ABM Treaty and the Constitution," and the Committee's September 1987 report on S. Res. 167, "The ABM Treaty Interpretation Resolution."

The Committee wishes to acknowledge that the conduct of those hearings, the drafting of the report, and the creation of the Condition herein described, the Committee received extensive and valuable assistance from its former legal counsel, Professor Michael J. Glennon.

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was intent upon addressing and refuting this effort at Executive enlargement of its share of the Treaty Power.

As Senator Sarbanes emphasized, "We did not raise this issue to begin with; it was in effect raised to us."

Thus, those who have described the Committee's interest in the treaty interpretation issue as an effort to refight the old ABM battle have missed the point. The Committee is looking forward—to the successful implementation of the INF Treaty and other treaties—and looking backward only to a crucial constitutional provision established 200 years ago, which the Committee feels duty-bound to uphold and affirm.

C. DESCRIPTION OF THE SOFAER DOCTRINE

In defending its new, "broad" interpretation of the ABM Treaty, the Reagan Administration employed a dual-track approach:

(1) In the context of *international* law, it used a new reading of the ABM Treaty text and of internal U.S. Government memoranda from 1971-72 (the "negotiating record")¹⁴ as a basis for asserting that the two superpowers had not actually agreed to limit the development of any ABM systems based on new technologies.

(2) In the context of *domestic, constitutional* law, it argued that alleged ambiguities in the Treaty text and in the negotiating history has been reflected in the Executive's presentation to the Senate—and buttressed this claim with a newly-minted doctrine which asserted wide Executive latitude for "reinterpretation" of treaties.

The argument of pervasive ambiguity—in the ABM Treaty's design and its presentation to the Senate—would have been sufficient, in terms of *logic*, to assert Executive latitude for a "broad" interpretation of the Treaty. Such an approach would have emphasized that the ABM Treaty was being interpreted "within the bounds of the ambiguity in the original shared understanding" held by the Executive and the Senate, rather than "reinterpreted."¹⁵

The additional assertion, however, amounted to a new constitutional doctrine—which the Committee will here call the Sofaer Doctrine—that effectively claims an *Executive right of treaty amendment disguised as treaty interpretation*.

The essence of the Sofaer Doctrine is the assertion that the Executive is not bound, in implementing a treaty, by what it has told

the Senate in seeking consent to ratification. The Executive is only bound, according to the doctrine, by a particular interpretation of a treaty's meaning if that interpretation meets three criteria: the particular interpretation must have been (1) "generally understood" by the Senate, (2) "clearly intended" by the Senate, and (3) "relied upon" by the Senate.

In a letter dated March 17, 1988 (see Appendix), White House Counsel Culvahouse described these criteria as "settled principles." But in fact they have been asserted with no constitutional basis—no reference to the intent of the Framers, to historical precedent, to case law—no reference to any source of constitutional authority. These alleged "principles" have been invented during this Administration, from which they emerged in the course of Mr. Sofaer's various presentations to Congress.¹⁶

Moreover, while such terms as "generally understood," "clearly intended," and "relied upon" may appear straight forward and appealing, in practice such criteria would be so difficult to meet that the Executive would almost never be bound by its own presentation to the Senate:

(1) How many Senators must speak on a given interpretation before it can be proven that the Senate "generally understood" that interpretation?

(2) How, unless the Senate has affirmed a particular interpretation by means of a formal condition, can it ever be demonstrated that the Senate "clearly intended" a particular interpretation?

(3) And if "relied upon" means (as Administration officials have suggested) that a particular interpretation was crucial to the Senate's action in approving a treaty or refraining from the imposition of a formal condition, how can that negative proposition—"The Senate wouldn't have done x if it weren't for y"—ever be proven?

Yet, under the Sofaer Doctrine, all three of these difficult proofs are required if a particular treaty interpretation is not to be subject to "reinterpretation."

Thus, the Sofaer Doctrine is in effect a claim of wide Executive latitude in treaty interpretation by means of the assertion, in the context of *domestic* law, of unreasonable criteria for what may not be "reinterpreted." If a particular interpretation of a particular provision of a treaty does not meet these criteria, it apparently is subject—according to the Sofaer Doctrine—to any interpretation the President may wish to place upon it.

As subsequent discussion will underscore, the import of this assertion is that the Senate is not a partner in the treaty process, but essentially an adversary—an onlooker of secondary status which, while it may derive some momentary power from its ability to block a treaty or impose formal conditions on its consent, must take extraordinary precautions if what it is told by the Executive about a treaty is to be determinative of the Executive's obligations in interpreting and implementing that treaty.

It bears note that there is no necessary relationship between the Sofaer Doctrine and a treaty's "negotiating record." By way of example, one may imagine circumstances in which the Sofaer Doctrine would be asserted but the "negotiating record" would play no role. Let us say that President Reagan's successor and Secretary Gorbachev wished to "reinterpret" the INF Treaty in a manner inconsistent with what the Senate

has been told in consenting to ratification. The Sofaer Doctrine would play the role of helping the administration loosen its obligations under domestic law, while as between the parties there would be no resistance to the new meaning being put on existing words and thus no need to justify the change by reference to a "record." Indeed, under this scenario the "record" would be assiduously disregarded, because it reflected a mean contrary to that which the parties wished to adopt.

Against this background one can examine Mr. Sofaer's provocative declaration that "When [the Senate] gives its advice and consent to a treaty, it is to the treaty that was made, irrespective of the explanations [the Senate] was provided."

With the Senate's role denigrated by the Sofaer Doctrine, the essence of the treaty from the U.S. perspective becomes not what the Executive and the Senate jointly understood at the outset but what the Executive at any moment wants to assert was agreed to with the other party. What little constitutional constraint there is on any particular interpretation would require an Executive determination that the Senate has fulfilled the Sofaer Doctrine criteria with regard to that interpretation—criteria the Senate rarely fulfills. This, under the Sofaer model, whatever the President can assert within the context of international law acquires a *de facto* supremacy over constitutional law.

There is, of course, a central defect in Mr. Sofaer's supposition that the President unilaterally "makes" treaties which the Senate subsequently is asked to approve. Constitutionally, no treaty is "made" until the Senate has given its consent. This is how a treaty becomes part of "the supreme Law of the Land."

The Legal Advisers' statement implies that the meaning of a U.S.-Soviet treaty is to be gleaned not by examination of what the President and the Senate jointly understood, but by examination of what the President and the Soviets agreed upon—regardless of what the President may or may not have told the Senate. This is tantamount to saying that a U.S.-Soviet treaty becomes the supreme law of the United States with the device and consent of the Soviet Union. The Constitution provides otherwise.

D. PROBLEMS WITH THE SOFAER DOCTRINE

The basic problem with the Sofaer Doctrine is that it is founded on the faulty premise that the Senate is not an integral part of establishing the meaning of a treaty under U.S. constitutional law—except insofar as the Senate does so through affirmative steps which impose restrictions on Executive latitude. The doctrine undercuts the basic model of treaty-creation: that the Executive negotiates and signs a treaty,¹⁷ explains its proposed treaty to a listening Senate, and then on that basis is accorded consent to ratify the treaty that has been explained.

Under the Constitution, the President may only ratify a treaty to which the Senate advised and consented. And it must be taken as axiomatic that the Senate cannot consent to that which it did not understand. Accordingly, the operative principle of treaty-making under the Constitution must be that, as co-makers of a treaty for the United States, the Executive and the Senate share a common understanding of a

¹⁴ Under international law (and also under domestic law), the primary source of interpretation is the text, which should be interpreted in accordance with the ordinary meaning to be given the treaty's terms in light of their context and in light of the treaty's object and purpose. Another major source of interpretation under international law is practice under the treaty. But the negotiating history—which refers to what happened, as opposed to any particular set of documents—is also recognized as having some interpretive significance insofar as it may reflect what the parties commonly understood about the meaning of the text.

For a discussion of the complexities of defining what a "negotiating record" might be, see the Committee's September 1987 report on S. Res. 167, pp. 49-51. See also *Restatement of the Law (3d)*, *Foreign Relations Law of the United States*, The American Law Institute, 1988; and Reports of the International Law Commission, United Nations, 1966.

¹⁵ Because of its interest in avoiding a renewed debate over the "broad-versus-narrow" interpretation of the ABM Treaty, the Committee will not comment here on its evaluation of the persuasiveness of the factual case for the "broad" interpretation; i.e., the assertion that the ABM Treaty—in its genesis, design, and presentation to the Senate—was suffused with ambiguity. The Committee notes only that the assertion of such pervasive ambiguity of the original "shared understanding" of the treaty, held by the Executive and the Senate, is legally sufficient to make the case for a "broad" interpretation without any need for innovative constitutional assertions.

¹⁶ See, for example, Mr. Sofaer's testimony to the Senate Foreign Relations Committee in the previously cited hearing volume entitled "The ABM Treaty and the Constitution."

¹⁷ The signing of a treaty does not bring the treaty into force. Only ratification can do that. Discussion of this and related concepts is contained in the Appendix section entitled "Principles of Treaty-Making and Interpretation."

treaty which has binding significant domestically as the treaty, upon ratification, becomes an integral part of United States law.

In the establishment and determination of that common understanding, the concept of legislative intent must be as applicable to treaties as it is to statutory law, in which intent may be explicit or implicit.

Explicit understandings regarding a treaty's meaning are manifest in formal conditions to the Senate's consent. These conditions include amendments to the text of a treaty as well as amendments to the resolution of ratification, such as "reservations," "understanding," and the like.

Implicit understandings represent Senate agreement with and acceptance of the Executive's explanations of the treaty. Whereas explicit understandings may at times entail the Senate's imposition on the Executive of a meaning not originally intended by the Executive, implicit understandings never do; they can only reaffirm the meaning presented by the Executive.

Although not formalized, implicit understanding must necessarily be equal in significance to explicit understandings. To accord them lesser significance would be illogical because implicit understandings commonly occur precisely where there is no disagreement as to meaning and where no issue has arisen. Such understandings are reflected in the various materials traditionally described as legislative history. These sources include hearings and committee reports, as well as debates transcribed into the Congressional Record. Such sources must be regarded as indicia of legislative intent as much for a treaty as for a statute.

What is crucial is that legislative intent, with regard to a treaty as well as a statute, is expressed not only in language drafted by legislators but in unchallenged communications of the Executive. Under longstanding principles of textual construction, Executive communications to the Congress concerning the meaning of a text are evidence of the meaning of that text if Congress (or the Senate) acquiesces in that meaning. In other words, the legislative branch is deemed to be placed on notice by the Executive that certain words will be construed in a certain manner. If Congress wishes a different meaning to obtain, it may act so as to effect that different meaning. If Congress does not act, however, it is properly deemed to have accepted—and to intend—the meaning communicated by the Executive.

In testimony to a joint hearing of the Judiciary and Foreign Relations Committees, Professor Louis Henkin, chief reporter of the new *Restatement of U.S. Foreign Relations Law*,¹⁸ summarized this concept as follows: "Where several [Executive] statements are made and there is general acceptance of their tenor, that is the Senate understanding. That is true in the case of Senate consent to a treaty, as it would be in the legislative history of a statute."

Clearly, in determining whether the Senate consented to the ratification of a treaty pursuant to an implicit understanding, a rule of reason must apply. Obviously, where the indicia of Senate intent or understanding (including unchallenged Executive communications or explanations) are few or inconsistent, no implicit Senate intent can reasonably be said to exist. On the other hand, where the indicia of intent (again, including unchallenged Executive communications or explanations) are several and largely consistent, an implicit intent can reason-

ably be concluded to exist. In such circumstances, the President is bound constitutionally to regard that intent as an implicit Senate understanding, and therefore an implicit condition of the Senate's consent. The Chief Executive cannot bring the treaty into force unless it reflects that condition, and subsequent Presidents must interpret the treaty subject to that intent.

The essence of the Sofaer Doctrine is to reject this concept of legislative intent as it has been normally understood, and to replace it with a requirement that the Senate act affirmatively to formally demonstrate what is "generally understood, clearly intended, and relied upon" regarding every provision of a treaty, lest that provision be subject to any interpretation a President may later prefer.

E. IMPLICATIONS OF THE SOFAER DOCTRINE

In very practical terms, the Sofaer Doctrine, if accepted, threatens two far-reaching and dangerous consequences:

(1) Nullification of the Senate's Treaty Power. A presidential right to adopt a different interpretation of a treaty, irrespective of the understanding on which the Senate based its consent, would tend to nullify the Senate's share of the Treaty Power and thus undermine a basic provision of the Constitution.

(2) Paralysis in Treaty-Making. The Senate's only recourse, to prevent its share of the Treaty Power being nullified, would be to attach elaborate and numerous conditions to treaties in order to have the Senate's understanding become an integral and explicit part of the ratification documents. Such procedure could easily overburden the treaty process to the point of paralysis.

F. THE INF TREATY AND THE SOFAER DOCTRINE

In the context of the Senate's consideration of the INF Treaty, two letters—from Secretary of State Shultz and from White House Counsel Culvahouse (both reprinted in the Appendix)—became the focus of Senate efforts to deal with the Administration's constitutional assertions.

Some originally saw in the Shultz letter (dated February 9, 1988) an indication of Administration willingness to retreat from its assertion of the Sofaer Doctrine, and thus reacted with disappointment when the doctrine was clearly reasserted in the letter (dated March 17, 1988) signed by White House Counsel Culvahouse. Under analysis, however, it becomes clear that the Administration has remained consistent in its adherence to the Sofaer Doctrine.

Accordingly the Committee agrees with the Culvahouse letter (as he stated in a brief follow-up letter dated March 22, 1988) that the Shultz and Culvahouse letters are consistent on the question of treaty interpretation. The Shultz letter tiptoed around the Sofaer Doctrine; the Culvahouse letter simply stated the Administration's views on the Sofaer Doctrine clearly and boldly.

The key to understanding this consistency is to recognize that the Administration conceded virtually nothing in the Shultz letter, which contained only these three items:

(1) an assertion that Administration testimony on the INF Treaty is "authoritative" (which appears to mean nothing more than dependably accurate);

(2) a kind of admonition that, because of these dependably accurate statements, the Senate need not incorporate Executive materials and testimony in the resolution of ratification—but no clear statement that this or a future Administration would be bound in any legal sense by such an "authoritative" presentation;

(3) a promise that the Reagan Administration would not depart from the meaning of the INF Treaty as presented to the Senate.

These three elements offer absolutely nothing by way of any agreement on principles as to what would bind the Executive. Thus, while the Culvahouse letter seemed to some to be a step backward, in fact it served only to articulate the premises underlying the vague and essentially noncommittal language in the Shultz letter. The essence of the Culvahouse letter is its clear reiteration of the Sofaer Doctrine, which asserts wide Executive latitude for "reinterpretations" by promulgating unreasonable criteria for what provisions in a treaty may not be "reinterpreted".

As matter of domestic law . . . the President is bound by shared interpretations which were both authoritatively communicated to the Senate by the Executive and clearly intended, generally understood and relied upon by the Senate in its advice and consent to ratification. [Emphasis added.]

In criticizing the draft Biden Condition under consideration by the Committee, the Culvahouse letter agreed that U.S. treaty interpretation must be based on the "shared understanding" of the Executive and the Senate when a treaty is made. But it rejected any notion that such "shared understandings" of binding significance could be found by examining the record of Executive testimony:

[The Biden Condition] apparently would define that shared understanding as encompassing all statements made by officials of the Executive branch during ratification proceedings. These statements presumably include and attribute equal dignity to the Secretary of State's definitive article-by-article analysis and to the extensive testimony of Cabinet members, treaty negotiators and other Executive branch officials, as well as to the Administration's answers to over 1,000 questions submitted by Members of the Senate, no matter how trivial or unimportant the issue may be to the Senate's advice and consent deliberation.

In testifying to the Foreign Relations Committee, Senator Nunn saw this sentence as casting doubt on the "authoritativeness" of all Executive branch communications concerning the INF Treaty. But in fact the Culvahouse letter does not deny that all Executive branch communications are "authoritative." Rather, it denies that all "authoritative" communications meet the criteria of the Sofaer Doctrine as to what is binding on the Executive.

This confusion apparently rests on Senator Nunn's eminently reasonable premise that "authoritative" testimony *should* have binding significance. But this is a premise that the Administration has never formally acknowledged—in the Shultz letter or anywhere else.¹⁹

G. PURPOSE AND CONTENT OF THE BIDEN CONDITION

The purpose of the condition drafted by Senator Biden—and offered on his behalf by Senator Cranston—is to reaffirm the long-standing practice and long-standing principle that the "shared understanding" of the Executive and the Senate, as reflected in the Executive's formal representations, is indeed fully binding—as opposed to binding only with regard to those provisions and interpretations which the Senate has gone to extraordinary lengths to brand as crucial to its consent, by formal condition or some other means.

Unlike the Sofaer Doctrine, the Biden Condition envisages the Executive and the

¹⁸ The full title of this preeminent compendium of U.S. law in the realm of foreign affairs is *Restatement of the Law (3d), Foreign Relations Law of the United States*, 1988.

¹⁹ One individual exception was Ambassador Nitze, speaking spontaneously. See the final paragraph of this section on "Treaty Interpretation" and also the Appendix of this report.

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Senate not as adversaries in the treaty-making process but as partners—co-makers of the treaty on behalf of the United States.

While both the Biden Condition and the Sofaer Doctrine rest upon the premise that a "shared understanding" is required to bind the Executive to a given interpretation of a treaty, the crucial difference is that the Biden Condition envisages that a "shared understanding" will be reflected in all "authoritative" statements by the Executive. Under the Sofaer Doctrine, the Executive is bound only by those "shared understandings" which the Senate has somehow labeled crucial to its consent by fulfilling the criteria of "generally understood, clearly intended, and relied upon."

The Committee's purpose, in adopting the Condition, was to lead the Senate to affirm a set of principles which reflect long-standing constitutional practice. By so doing, the Senate can:

Avoid the need for other conditions pertaining to specific interpretations of the INF Treaty;

Repudiate a pernicious doctrine that was asserted solely for a specific purpose; and

Establish a position with regard to future treaties such that the Senate can avoid repeating the inclusion of a formal condition. The Senate's 1988 action will have been sufficient to reaffirm fundamental constitutional principles of treaty-making.

The Biden Condition was drafted in consultation with Professor Louis Henkin, chief reporter of the *Restatement of U.S. Foreign Relations Law* and the nation's most generally esteemed scholar in this field. The provision was designed to articulate and affirm, as succinctly as possible, these constitutional principles reflected in time-honored practice: to wit, that the original shared understanding of the Executive and the Senate must govern a treaty's subsequent implementation, and that such understanding is reflected in the Executive's presentation to the Senate.

A key consideration in the drafting of the Condition was to strike an appropriate balance between the general and the specific. As stated earlier, the Committee did not wish to see the Senate fight once again a battle over the Administration's "broad" interpretation of the ABM Treaty. The Committee therefore sought to direct this Condition, to the maximum degree possible, to the INF Treaty. At the same time, however, the Committee's purpose, in addressing the treaty interpretation issue, was not to erect *sui generis* barriers against any "reinterpretation" of the INF Treaty, but to affirm principles that *inherently apply* to the INF Treaty.

The Committee notes that, in one respect, its action in including this Condition in the INF Treaty's resolution of ratification was unnecessary insofar as principles which inherently apply to the INF Treaty would apply even in the absence of any Senate action affirming them. Given the circumstances, however, the Committee judged that to fail to affirm such principles could suggest some degree of acquiescence in the Sofaer Doctrine, which the Committee views as an Executive attempt to assert an unconstitutional arrogation of the Treaty Power. In the sense the Committee views the Biden Condition, paradoxically, as both unnecessary and highly significant.

The Condition, as approved by the Foreign Relations Committee, stipulates as follows:

That this Treaty shall be subject to the following principles, which derive, as necessary implication, from the provisions of the Constitution (Article II, section 2, clause 2) in the making of treaties:

(a) the United States shall interpret this Treaty in accordance with the understanding of the Treaty shared by the Executive and the Senate at the time of Senate consent to ratification;

(b) such common understanding is:

(i) based on the text of the Treaty; and

(ii) reflected in the authoritative representations provided by the Executive branch to the Senate and its committees in seeking Senate consent to ratification, insofar as such representations are directed to the meaning and legal effect of the text of the Treaty;

(c) the United States shall not agree to or adopt an interpretation different from that common understanding except pursuant to Senate advice and consent to a subsequent treaty or protocol, or the enactment of a statute.

The Condition also stipulates that "This understanding shall not be incorporated in the instruments of ratification of this Treaty or otherwise officially conveyed to the other contracting Party."

Several concepts in the Condition warrant discussion:

Text of the Treaty: Both domestic and international law give primacy in treaty interpretation to the text of the treaty. International law requires that a treaty be interpreted in accordance with the ordinary meaning to be given the treaty's terms in light of their context and in light of the treaty's object and purpose. Domestic law does not differ, and is also premised on the assumption that the Executive and the Senate, as co-makers of a treaty for the United States, will share a common understanding of a treaty's text. As a matter of record, that common understanding of the text will be reflected in the Executive's formal presentation of the treaty to the Senate: in formal presentation documents, in prepared testimony, and in verbal and written intercourse regarding the treaty's meaning and effect.

In Professor Henkin's judgment, the phrase "meaning of a treaty" in the original draft Condition included the treaty text. However, in order to underscore that the Biden Condition had not (as alleged in the Culvahouse letter) ignored the primacy of the treaty text as a source of interpretation, the draft Condition was altered at the initiative of Senator Dodd, who worked in consultation with Professor Henkin to refine language that would serve to preempt any further criticism along such lines. Senator Dodd's adjustments in the Condition also served to underscore that the Executive's "authoritative" representations have interpretive significance only insofar as such representations relate to the meaning and legal effect of the treaty text. Thus are excluded the Administration's answers to such questions as "What is the overall effect of the INF Treaty on U.S. security?" and "What will the Administration do to ensure an adequate military balance in Europe?"

As Senator Dodd stressed, this wording "binds the Executive only in those parts of its presentation where it analyzes and explains the text itself, such as 'That is what these words mean,' and 'This is what their effect is under international law'—in short, where the Executive describes the precise international obligation about to be assumed by the United States.

Authoritative Representations: With regard to what constitutes an "authoritative" representation by the Executive, a rule of reason must apply. Certainly, substantial weight must be accorded the Executive's formal presentation documents, which include the treaty itself and a detailed explanation of the Executive's understanding of the treaty's terms. Considerable weight

must also be accorded the prepared testimony of top Executive officials. Additional information elicited during Executive-Senate interaction regarding the meaning and legal effect of treaty terms will also be important because such discussion and questioning will cover items of particular interest and concern to the Senate, as a co-maker of the treaty for the United States. The overall significance of Executive branch representations makes it incumbent upon the Executive to take great care to avoid or remove any inconsistency in its overall presentation of a treaty. The possibility, however, that the Executive may prove fallible—that an "authoritative" representation could, on rare occasion, be inconsistent with the text of the treaty, or with another "authoritative" representation—is simply an unavoidable fact of life, which does not in any way diminish the crucial role of such representations in providing evidence of the common understanding of the text of a treaty held originally by the Executive and the Senate as co-makers of a treaty.

In this context arises the question of the role of the INF Treaty "negotiating record," access to which was afforded Senators not as a part of the Executive's formal or "authoritative" presentation of the Treaty, but in response to a Senate request. This is discussed in the following section, entitled "The INF Treaty Negotiating Record."

Methods for Establishing New Interpretations: As originally drafted, the Biden Condition stated that the United States would not agree to or adopt a new interpretation of the INF Treaty without the "approval of the Senate." That phrase was intended to encompass three possibilities, each of which would legitimately result in the United States adopting a different interpretation of a treaty:

(1) an amendment to the treaty, accomplished by protocol or other means and ratified by the Executive with the advice and consent of the Senate;

(2) a change in the treaty's terms of implementation agreed to by the parties under procedures, and within the framework, established by the treaty as originally ratified with the advice and consent of the Senate; and

(3) a subsequent statute.

In response to a concern expressed by Senator Helms that this should be stated more explicitly, Senator Cranston offered new phrasing which substituted the words, "except pursuant to Senate advice and consent to a subsequent treaty or protocol, or the enactment of a statute." Professor Henkin subsequently indicated his judgment that the principle being enunciated had not been altered by the change in language.

With regard to the modality of a statute resulting in a change in U.S. treaty interpretation, the Committee wishes to emphasize that the Condition envisages this possibility not as a matter of advocacy but as a matter of accuracy. In the overwhelming majority of cases, the preferable course for the United States is for the Executive to negotiate an international agreement—a new treaty or a protocol to an existing treaty—which is subsequently ratified with the advice and consent of the Senate. However, as a practical reality, it is a truth of U.S. domestic law that a statute requiring the President to adopt a new interpretation of a treaty is binding on the Executive.²⁰

²⁰ One example, during the Wilson Administration, involved a congressionally-initiated statute requiring a new U.S. policy that contravened existing international arrangements pertaining to the Panama Canal. In successfully persuading Congress

The Committee notes that paragraph (c) of the Condition is essentially a corollary of the principles in paragraphs (a) and (b). The import of paragraphs (a) and (b) is that the Executive must interpret a treaty in accord with the original Executive-Senate "shared understanding" of the treaty, which is reflected in the Executive's presentation to the Senate, and accordingly that the Executive may not, acting alone, adopt an interpretation outside the bounds of that "shared understanding." Paragraph (c) simply spells out the circumstances under which the Executive would receive a mandate to adopt an interpretation outside such bounds.

Non-Conveyance of Condition to the Other Party: A stipulation that the Condition not be conveyed to the Soviet Union as a part of the instruments of ratification was included in the Condition at the initiative of Senator Helms. The Committee viewed this as a matter of underscoring that the Condition is not directed to the U.S. obligations under international law, which provides the context within which the U.S.-Soviet exchange of instruments of ratification will occur. Rather, the Condition is binding under domestic law, and obtains its binding effect because the President, in the absence of the resolution of ratification, lacks authority to participate in the treaty's ratification. He obtains such authority through the resolution of ratification and is governed by any stipulations by which the Senate conditions its consent.

In sum, the President may not act upon the Senate's consent without honoring this Condition. Nothing that he or his Administration does, by statement or action, whether before or after the act of ratification, can alter the binding effect of any condition which the Senate places upon its consent to treaty ratification. If the President brings the INF Treaty into force, the Condition takes effect.

H. THE INF TREATY "NEGOTIATING RECORD"

Because the Sofaer Doctrine and the "negotiating record" were closely tied in the ABM dispute, some Senators demanded the "record" of the INF Treaty by means of underscoring the point that the Administration's assertions about the role of the Senate in treaty-making had destroyed any basis on which the Senate could operate in confidence of Executive good faith. With the INF Treaty "negotiating record" having been provided under these circumstances, both the Administration and the Senate now face the task of ensuring that Senate review of "negotiating records" does not become an institutionalized procedure.

First, a systematic expectation of Senate perusal of every key treaty's "negotiating record" could be expected to inhibit candor during future negotiations and induce posturing on the part of U.S. negotiators and their counterparts during sensitive discussions.

Second, by seeking possession of the myriad internal Executive memoranda comprising the "negotiating record," the Senate would impose upon itself a considerable task with no clear purpose. Because this "record" does not constitute an agreed account of the negotiations, such documents have no formal standing. Accordingly, regularized efforts to reconcile these "snapshots" of the negotiation process with the resulting treaty text as explained by the Executive would serve only to divert the Senate's attention from the central aim of the ratifica-

tion process—which is to build, between the Executive and the Senate, a clear "shared understanding" of the treaty text and the obligations which that text entails.

The overall effect—of fully exposed negotiations followed by a far more complicated Senate review—would be to weaken the treaty-making process and thereby to damage American diplomacy.

The traditional approach does not, of course, preclude reference to the "record" where such reference can be useful in explaining the effect of treaty provisions which may appear ambiguous or about which questions may arise. The Executive may sometimes wish to initiate such reference to the "record"; on some occasions the Senate may request a detailed account of the interchange which resulted in a particular treaty provision. But this case-by-case approach is far superior to a systematic submission of the "negotiating record," which implies either that treaties tend to be replete with ambiguity or that the Executive cannot be trusted to present an accurate account of the obligations to be assumed by the United States. Neither assumption should be allowed to govern the basic Executive-Senate interaction in the treaty-making process.

Now that the INF Treaty "negotiating record" has been made available to the Senate, the status of these documents requires resolution. In the Committee's view, that resolution would not have been satisfactorily achieved by any stipulation in the resolution of ratification declaring that the Senate had scrutinized the "record" and satisfied itself that the "record" was in harmony with the formal Executive branch presentation of the Treaty. Such an approach could entail three significant problems:

(a) institutionally, it could imply that such security is important to the Senate's examination of treaties and thus should be institutionalized;

(b) retroactively, it could imply that such scrutiny should have been exercised in the past; and

(c) specifically, with regard to the INF Treaty, it could leave open the question of what is to be done if, in the future, there is an assertion—for example, by a subsequent Administration—that notwithstanding the Senate's perception of harmony there was an inconsistency between "record" and the Executive presentation.

Accordingly, the Committee believes that no formal finding concerning the contents of the INF Treaty "negotiating record" would be wise. In the Committee's judgment, the status of this "record" is established by the basic principles affirmed in the Biden Condition. If U.S. treaty interpretation is to be based upon the shared understanding of the Senate and the Executive at the time of ratification, and if the common understanding is reflected in authoritative Executive branch statements made in seeking Senate consent to ratification, then sources of interpretation which appear at variance must be subordinated to those authoritative statements.

In sum, although internal Executive memoranda and other negotiating materials may have been available to members of the Senate, some of whom have sought to assure themselves that this "record" is consistent with the Administration's formal presentation, the clear corollary of the constitutional principles cited in the Biden Condition is that such documents need not have been examined for consistency and should not be deemed material to U.S. interpretation of the INF Treaty insofar as they are inconsistent with the Executive branch's formal presentation of the INF Treaty.

I. ADMINISTRATION CRITICISMS OF THE BIDEN CONDITION

The Culverhouse letter (previously cited and reprinted in the Appendix) makes three charges against the Condition, which the Committee has considered but to which the Committee can attach little weight:

(1) "Changing the Rules of Treaty Interpretation"

Under this heading, the Administration's position makes two false charges and affirms a false principle.

The false charges are that the Condition (a) ignores the text of a treaty as the primary source of meaning²¹; and (b) accords "equal dignity" to all sources of interpretation, ranging from the Secretary of State's definitive article-by-article analysis to the written answers to hundreds of Senators' questions.

As to the importance of the text, there is no issue. No one disputes that the text of a treaty constitutes the seminal source of the treaty's meaning. (As described previously, at the initiative of Senator Dodd the original draft text of the Condition was revised before Committee approval to underscore this point.) The Condition simply affirms that the Executive must continue to interpret a treaty in accord with the original understanding of that meaning shared by the Executive and the Senate.

As to the weight to be given to various parts of the Executive presentation, there is also no real issue. The Administration's position itself envisages that "the interpretation of a treaty [will be] authoritatively shared with . . . the Senate." Obviously a rule of reason must apply. As stated above, the text is the central source of meaning. But that meaning is elaborated upon through various elements of the Executive's presentation. The Condition does not state that the treaty is "defined by" the Executive's presentation. Rather, it affirms that the "common understanding" of the two branches is reflected in—meaning evidenced by—authoritative representations by the Executive.

The Administration, however, does not wish to accept this because it wishes to assert broad latitude for subsequent Executive "reinterpretation." It therefore affirms what, under analysis, proves to be a truly radical constitutional principle: that the Executive must adhere to a given interpretation of a treaty *only if* that interpretation was "clearly intended, generally understood, and relied upon by the Senate."

(2) "Unconstitutional Mechanism for Altering Treaty Interpretation"

Under this heading the Administration alleges that the Condition "interferes with the President's constitutional responsibility to interpret and implement treaties and also constitutes an unprecedented arrogation of treaty power by the Senate." This charge is without foundation.

It is indisputable that the President alone bears the constitutional obligation to interpret and implement treaties, and the principles affirmed by the Condition are perfectly consistent with that. What the President does *not* have the authority to do is interpret a treaty in a way that constitutes an amendment. His interpretive action must, if he is to behave constitutionally, be in accordance with the original understanding of

to repeal this legislation, President Wilson argued that the United States is simply "too big and powerful and self-respecting" to put a strained interpretation on its promises.

²¹ As discussed earlier, the first draft of the Biden Condition, which is the object of the Culverhouse letter's criticism, used the phrase "meaning of treaty" on the premise that this phrase is synonymous with "meaning of the text of a treaty." Thus the concept and central role of the "text" of treaty were always implicit in the Biden Condition.

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the treaty. If he wishes to change the meaning of a treaty, he must obtain the agreement of the other party and formalize the change with the established mechanism of Senate advice and consent.

Meanwhile, the President will possess inherent latitude in his capacity as interpreter of every treaty to which the U.S. is a party. In the international context, each such treaty will inevitably provide a measure of flexibility in interpretation and implementation—within the treaty framework. Similarly, in the domestic context, the President will inevitably have latitude for interpretation within the bounds of the "shared understanding" established with the Senate.

(3) "Risk of Unilateral Restrictions on the United States"

Under this heading, the White House letter seeks to raise the specter of the United States being bound by constitutional processes to one interpretation of a treaty while the Soviet Union is free to apply a less restrictive interpretation.

This specter—originally raised by Mr. Sofaer while trying to justify the "broad" ABM Treaty interpretation—is highly theoretical. It is a truism that the Executive has different obligations under domestic and international law, and therefore it is possible to hypothesize situations in which those obligations could conflict. However, in practice this has not proven to be a serious problem and there is no basis for the Administration's assertion that the Condition "would substantially increase this risk." The Condition, after all, does no more than state principles which already suffuse the *Restatement of U.S. Foreign Relations Law*.

An apparent premise of the Sofaer Doctrine is that practical difficulties would ensue if the Executive were bound by what it tells the Senate, because it would not be an abnormal circumstance for a difference to exist between what was agreed to with the other party and the explanations provided to the Senate. There should be no such difference. It is the Executive's responsibility to ensure sufficient clarity in a treaty and in its explanations thereof to the Senate so that no conflict exists between the shared understanding of the parties on the one hand and the shared understanding of the Executive and Senate on the other. If, in *extremis*, such conflict should arise and prove not resolvable by discussion or negotiation with the other party, the United States of course has the option of withdrawing from the treaty.

In sum, this largely theoretical problem should be addressed if and when it arises—not by a preemptive alteration of constitutional principles. The Senate should not accept a doctrine that assumes and protects carelessness or deviousness on the part of the Executive.

J. PROPOSED "COMPROMISES" AND OTHER ALTERNATIVES

The Committee takes note of the assertion that the Committee failed to pursue potential "compromises" that might allegedly have resulted in Committee unanimity on the issue of treaty interpretation. The Committee rejects this assertion as unfounded.

The Committee notes first that when Senator Biden initially drafted the Condition he circulated his text to a number of Senators of both parties in hope of engendering bipartisanship on an issue—the Senate's role in the Treaty Power—that should be of concern to all Senators. Moreover, as Senator Cranston stated when offering the proposal, "I have hoped that this simple language . . . could be adopted unanimously, with the support of Senators on both sides of the aisle. I have worked closely over

many weeks with a number of Democratic and Republican Senators on and off this Committee . . . in an effort to work out a bipartisan solution."

As to potential "compromises," the Committee takes note of the following text, submitted by supporters of the Administration as a proposed substitute for the Biden Condition:

(a) that, as a matter of international law, only the mutual obligations assumed by the parties bind the United States;

(b) that the Senate has relied upon the testimony and written submissions, which it regards as authoritative, of witnesses of the Executive Branch concerning the meaning of the Treaty;

(c) that, as a matter of domestic law, the United States is bound by interpretations which the Senate clearly intended and generally understood would bind the United States in giving its advice and consent;

(d) that, the United States being so bound, no interpretation different from that intended and understood by the Senate, as a matter of domestic law, may be agreed to or adopted by the United States without appropriate legislative action.

The Committee points out that, while somewhat masked, the Sofaer Doctrine is clearly present in paragraphs (b) and (c), which have the effect of asserting that the three Sofaer Doctrine criteria—"generally understood, clearly intended, and relied upon"—must somehow be met lest the Executive have a right of "reinterpretation." In the final analysis, the Committee could hardly be expected to affirm the Sofaer Doctrine in a provision the purpose of which was to refute that Doctrine.

To be sure, various members of the Committee and of the Senate leadership displayed a good-faith willingness to discuss possible compromise language. But no compromise was ever reached. Nor was one possible so long as discussions focused on proposals designed to affirm the Sofaer Doctrine and thereby denigrate the Senate's role in exercise of the Treaty Power.

Senator Cranston summarized the situation as follows: "If we settle for a solution that undermines the Senate's role in the treaty process, we who serve together in the Senate now may well be charged with giving away the Senate's treaty powers."

The basic issue remains. On the one hand are those who view the Executive as constrained in treaty interpretation by the original shared understanding of a treaty as reflected in authoritative explanations of the text provided by the Executive in seeking consent to ratification. On the other are those who wish to affirm a radical new doctrine that has the effect of requiring the Senate to meet certain criteria lest the Executive have latitude to "reinterpret" a treaty provision as he may find convenient.

The Committee wishes to emphasize that in asserting the binding significance of the Executive's original representations, it has articulated the principle with great care. Whereas some formulations would have asserted that the Executive is directly and explicitly "bound by" its representations, the Biden Condition makes no such assertion. Rather, beginning with the premise of Executive-Senate partnership in the making of treaties, it asserts only the binding quality of the original "shared understanding" and then asserts a derivative principle: that this "shared understanding" of a treaty's text is "reflected in"—meaning evidenced by—the Executive's authoritative representations "insofar as such representations are directed to the meaning and legal effect of the text" of the treaty.

This construction helps to underscore that a rule of reason must apply in in-

stances where inconsistencies may appear, lest the Executive be "bound by" two inconsistent requirements. Thus, the Biden Condition is precisely and carefully balanced in seeking to articulate the constitutional principles it aims to uphold.

Finally, the Committee notes that any "comprise" of this basic formulation would have the effect of diluting and thereby perverting the provision's basic purpose. The Committee does not wish to be a party to any act of Executive aggrandizement which, however expedient, would have the effect of impairing the treaty-making process or future American diplomacy. Specifically, the Committee wishes to uphold principles and practices of treat-making under which the Senate is able to accept the Executive's presentation of a treaty in confidence and approve the treaty in good faith solely on the basis of that presentation, without the obligation of creating an elaborate formal record, or imposing formal conditions, to display what it "generally understood, clearly intended, and relied upon" as a defense against future Executive "reinterpreters."

The only practical alternative to the Biden Condition is to do precisely that: to laud the INF Treaty and its resolution of ratification with an enormous burden of formal amendments, stipulations, conditions, and the like, which could require months of debate. For example, in response to questions, the Administration provided "authoritative" representations regarding a number of issues of direct concern to the Committee, including:

The meaning of "weapon-delivery" vehicle in Article II;

The effect of Article XIV on U.S.-NATO weapons cooperation;

The effect of Article VII on testing of sea-launched cruise missiles; and

The effect of Article II on the testing of strategic missiles at INF ranges.

Given the context created by the Sofaer Doctrine, however, the Committee could not—without the countervailing effect of the Biden Condition—have been assured that such Administration representations were determinative of the Executive's obligations in carrying out the Treaty. Accordingly, in the absence of the Biden Condition, some Members would have felt obliged to proposed specific conditions on these and other issues.²²

Senator Nunn articulated this in testimony to the Committee when he noted that in the absence of clear confidence that the Senate could regard Executive testimony as having binding significance, "then of course there are a number of us that feel that we would have to come to the floor of the Senate with a number of amendments that would make it clear that the testimony we received on ambiguities was indeed . . . binding on this Administration and future Administrations."

²² By way of a detailed example, the text of the INF Treaty does not clearly state that a "weapon-delivery" vehicle encompasses missiles using future technologies to damage or destroy targets. Nor does the INF Treaty specifically define a "weapon-delivery" vehicle as a missile capable of damaging or destroying a target. The Administration provided the Committee with a specific assurance that the United States defines the term "weapon-delivery" vehicle as a missile capable of destroying or damaging a target and that missiles employing futuristic technologies such as lasers would be covered by the INF Treaty. Since the INF Treaty is a permanent treaty, the question of whether it covers missiles using futuristic technologies is a highly relevant concern. Thus, in the absence of the Biden Condition, the Committee might well have attached a condition to the resolution of ratification on this issue.

If the Senate is required to consider formal conditions with regard to every such issue, the result would be indefinite delay, a product which might have been contorted beyond any possibility of U.S.-Soviet ratification, and no resolution at all of the current constitutional issue. Against this prospect, it becomes clear that the Biden Condition is a cautious, responsible, and straightforward means of addressing a complex and potentially grave problem.

As Senator Cranston emphasized during the mark-up, "Adoption of this plain and simple language will liberate us from an exhaustive and absurd obligation to speak in the resolution of ratification to our understanding of every word of the Treaty . . . It allows us to rely on the Administration testimony without the cumbersome, time-consuming process of restating it."

In sum, the two categories of alternatives to the Biden Condition are both undesirable. So-called "compromise" language would be perverse to the degree that it embraced the Sofaer Doctrine. And to delete the Biden Condition would be to lay the resolution of ratification open to a plethora of proposed conditions on the specifics of INF Treaty interpretation.

K. RELATIONSHIP TO ABM TREATY DISPUTE

The Committee points out that its interest in avoiding a replay of the ABM Treaty dispute was manifest in its efforts to make this provision as INF Treaty-specific as possible, through the use of the words "this Treaty," although as indicated earlier the Committee recognized that any assertion of principles would have broader meaning.

The Committee therefore reiterates, that, even if passed by the Senate, this Condition would not be dispositive on the issue of ABM Treaty interpretation because the essential argument used to justify the "broad" interpretation is not an assertion of constitutional principle but a factual claim of pervasive ambiguity. In other words, the Administration's most basic claim is not actually that it is "reinterpreting" that Treaty but that it is interpreting the Treaty within the wide latitude provided by the general ambiguity which, it argues, surrounded the ABM Treaty's meaning at the time of ratification.

Accordingly, as Senator Dodd stressed, "One can vote for [the Biden Condition] and still support the 'broad' interpretation of the ABM Treaty because that debate is mostly over facts. You ought to vote against [the Condition] only if you believe that under the Constitution the Executive branch can bring a treaty here, give you an authoritative explanation directed to the meaning of its text, and then after the treaty is ratified return and state that that was not really what the text meant—it meant something else."

In sum, the Biden Condition is not designed to resolve the dispute over alleged ambiguities in the genesis, design, and implementation of the ABM Treaty, or to constitute a final disposition of the issue of Treaty interpretation. Rather, the provision is intended to affirm certain constitutional principles which have been brought into question during the ABM Treaty debate.

At the same time, the Committee wishes to note, on behalf of those who oppose the Administration's "broad" interpretation, that since the issue of Treaty interpretation did not arise during Senate consideration of the ABM Treaty, and was not foreseen at that time, the absence of any action pertaining to interpretation of the ABM Treaty at that time cannot be construed as having any bearing on the interpretation of that Treaty.

1. CONCLUSION: A SUMMARY OF KEY POINTS

In conclusion, the Committee wishes to emphasize what the treaty interpretation issue is and what it is not:

The issue addressed by the Biden Condition is *not* a struggle over who interprets treaties. It is solely and indisputably the President's responsibility to interpret and implement treaties for the United States. At issue is the question of what limits are to govern the President's latitude in exercising that power.

The issue is *not* whether and what testimony by the Executive is "authoritative." To answer that question is still to be without an answer as to whether "authoritative" representations are in any way binding on the Executive. The issue is whether and how such representations have a binding significance under United States law.

The issue is *not* whether to have a "clean" resolution of ratification for the INF Treaty. The issue is how, without burdening the resolution with a *plethora* of formal conditions, the Senate can ensure that the current "shared understanding" of the Treaty, as reflected in what the Executive has told the Senate, becomes determinative of the Treaty's future implementation.

The issue is *not* the "broad-versus-narrow" interpretation of the ABM Treaty. The issue is the Sofaer Doctrine, which asserts unreasonable, highly elastic criteria which must allegedly be met before the Executive may not "reinterpret" a given treaty provision. To reject the Sofaer Doctrine is not to resolve the ABM Treaty dispute, but simply to narrow it to the confines of a debate over facts: that is, to a debate over alleged ambiguities surrounding that particular Treaty.

The issue is *not* whether the Executive is to be bound by every last utterance of its representatives before Congress, but whether and how the principle of original "shared understanding" is to govern a treaty's implementation. Shall it be axiomatic that such "shared understanding" is reflected in authoritative Executive representations of the treaty's meaning? Or must the Senate deal with the Executive as an adversary, who will not act in good faith and around whom a cage of explicit stipulations must be built?

The issue is *not* a Senate effort to chart new constitutional ground, but an Executive effort to do so. It is not the Senate but the Executive which seeks to assert constitutional principles in a manner which expresses an aggressively broad claim on power. An adequate response requires no counter-assertion of Senate power but a simple manifestation, as reflected in the Biden Condition, of Senate unwillingness to acquiesce in Administration assertions which, if not refuted, could imply acceptance of a radical aggrandizement of presidential power. As Senator Kerry put it, "if we do not say this, we are acquiescing in a new statement of constitutional principles."

The Committee reiterates its intent that the Senate not digress on this question into a replay of the ABM Treaty dispute. That question is not here at issue, and will not be disposed of even by a Senate affirmation of the principles embodied in this Condition. The real issue, simply put, is this: that those who oppose this Condition are, in effect, proposing to concede to the President a power the Constitution does not grant him, and which neither any previous President nor any previous Legal Adviser has ever asserted.

The Foreign Relations Committee seeks not to make the Senate the interpreter of treaties, but to require that the Executive interpret and implement treaties within the boundaries of the Executive's original pres-

entation in obtaining Senate consent to ratification. Senator Sarbanes put the issue clearly: "I dare say that if Members . . . think about it carefully, I do not think anyone would want an Executive to be able to alter the interpretation of a treaty from the representations that were made to the Senate at the time the Executive sought the Senate's approval." Heretofore, this principle has never been placed at issue, and the Committee urges the Senate to uphold the principle against the current ill-considered and unnecessary challenge mounted by Mr. Sofaer.

Finally, the Committee notes the February 1 exchange—at the outset of hearings on the INF Treaty—between Senator Biden and Ambassador Nitze, during which Ambassador Nitze stated that "an authoritative statement by a member of the Executive branch is determinative as to what the meaning of the Treaty is from the standpoint of domestic law."²³ Had the Administration subsequently been willing in the Shultz letter, the Culvahouse letter, or any other authoritative representation to affirm this principle—and thereby repudiate the Sofaer Doctrine—the question of treaty interpretation is the Administration's unwillingness to endorse the principle stated by Ambassador Nitze and affirmed more formally and precisely by the Biden Condition.

THE PRESIDING OFFICER. Who yields time? The Senator from California.

MR. WILSON. Mr. President, would my friend from Rhode Island yield for a question?

THE PRESIDING OFFICER. Does the Senator from Rhode Island yield for a question?

MR. PELL. Certainly.

MR. WILSON. I thank my friend. Mr. President, the question that I would ask is one that has not been described, I think, by the chairman of the committee in his description of the application of the Biden-Pell amendment, or even the Byrd substitute for it. I would point out that we are, of course, now dealing with the Byrd substitute.

But he has made the comment, as have so many who are proponents of this legislation, that they do not wish to see a situation occur in which a future President can come in and change the interpretation that was agreed to by the President and the Senate at the time the advice and consent of the Senate, was given.

Let me ask my friend this question, and I think it is a very straightforward one: What about the situation that you have not described where there is determined to be a clear inconsistency between authoritative representations and the negotiating record?

MR. PELL. In that case, I imagine the administration would make the choice that most favors its policy, and if the Congress agreed, we would concur in it.

This is one of these things that when the time comes, the decision will probably be made more on its political grounds with a legal covenant.

²³ This exchange is reprinted in full in the Appendix.

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Mr. NUNN. Will the Senator yield? Let me give my impression on that one.

If I understood the question of the Senator from California, what happens when there is a difference between the authoritative representations made by the negotiators and the legislative history. I think the answer to that is the administration has the burden; they are the ones who negotiate the treaties. The Senate joins in the making of treaties by giving ratification.

They are the ones who have the negotiating record. They are the ones who produce it. They know what it includes. They are the ones who would hold parts of it, which they have done on the INF Treaty. There are parts of this treaty we do not have, and we will never see. They are the ones who know that.

It is their job to make sure what they say authoritatively to the committees of this Senate is consistent with that negotiating history. If they make an error and they know about it before we ratify it, they have agreed, for instance, to let us know. If there is any error they made in any of that testimony or conflicts, they are supposed to let us know. Secretary Shultz knows that; Ambassador Glitman knows that. They let us know.

If there is a conflict, then it is the administration's problem. It is part of their obligation to straighten it out. Otherwise, if you take the other view, the Senate of the United States has to demand every scrap of paper that relates to the negotiating history. We have done that even on the INF Treaty. Then we have to go through and cross-examine it.

What that would finally result in is the executive branch not being able to use treaties to conduct foreign policy. They could not do it because we could not ratify it.

Mr. WILSON. Mr. President, I thank the Senator for his intervention because he makes my point, and that is very simply having earlier commended him and others who have participated in what I conceive to be the most thorough analysis of any treaty in the history of the United States, the most comprehensive examination. He has made the point that it is the obligation of the executive branch to see that there is consistency between those authoritative representations and the negotiating record. It may be their obligation.

On the other hand, Mr. President, I am much more concerned with the ability, as well as the prerogatives of the Senate, to test that consistency. I submit that without resort to the negotiating record, the Senate has no ability, whatever its prerogatives may be. It cannot test for consistency as, indeed, the Senate did in this examination of the INF Treaty because for the first time in history, the Senate, at the time of ratification, had before it the negotiating record with which to

compare and measure the consistency of authoritative representation by the administration.

Mr. NUNN. Will the Senator yield on that point briefly?

Mr. SARBANES. Mr. President, who controls the time?

The PRESIDING OFFICER. The Chair will state that the Senator from Rhode Island has the time and has yielded 5 minutes. The Senator from Rhode Island yielded to the Senator from California for a question. It is still the time of the Senator from Rhode Island.

Mr. BYRD. No, Mr. President.

The PRESIDING OFFICER. The Senator from Rhode Island was yielded 5 minutes.

Mr. BYRD. I yielded 5 minutes to Mr. PELL.

The PRESIDING OFFICER. Correct.

Mr. BYRD. There are times when I will have to be off the floor. I believe I have 84 minutes remaining.

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. I yield that to Mr. NUNN to control until I am on the floor.

The PRESIDING OFFICER. The Senator from Georgia is in control of the time.

Mr. NUNN. Mr. President, let me just complete this one thought, and if the Senator from Maryland seeks recognition, I will be glad to yield him time.

I say to my friend from California, I think he is correct in the statement he has made. I believe this is the most thorough review of the negotiating history, the treaty, and all the ramifications.

Mr. WILSON. I thought the Senator would agree with that much.

Mr. NUNN. I think it is the most we probably ever have had, and maybe the most we ever will have, although I think we do have an obligation to do a thorough review.

What I will not agree with is the implication that we have in our possession the whole negotiating history because we have only part of it. We do not have the negotiating instructions.

Mr. WILSON. Will the Senator yield for a question on that point?

Mr. NUNN. Let me complete this, and then I will yield.

We do not have internal memorandums which we call deliberative material. We did not get a number of documents that were exchanged between the two parties.

We give them certain documents; they give us certain documents. We received joint documents. We thought we received all of those. We were supposed to. We did not get documents that the United States turned over to the Soviet Union and documents they turned over to us.

So we do not have the total negotiating history, but we probably have a larger part of it than we will ever get again. We probably will not exceed this.

So to pretend that the United States and our committees can take authoritative testimony that is given by administration witnesses who negotiated the treaty and then cross-examined that against every part of negotiating history, much of which we do not have, is simply an illusion. It cannot be done, and it should never be the responsibility of the Senate to undertake that mission.

That mission should be an Executive mission. They have all the materials. They negotiated it. They know what they have. They know what they have given us. They know what they have said, and it is up to them to determine if there are any conflicts.

I will be glad to yield to the Senator from California for a question, and then I want to yield some time to the Senator from Maryland.

Mr. WILSON. Mr. President, I thank my friend from Georgia, the distinguished chairman of the committee. I think that he has really made my point, but my question to him is that even conceding, as I did earlier, before the Senator from Georgia took the floor, that what we have by way of the negotiating record does not contain instructions to negotiators, their responses to the U.S. Government and a number of other things that admittedly are not contained in it.

Given what we have, is it not true that the distinguished chairman personally found the response of Ambassador Glitman on the futures issue insufficient, and found it necessary to resort to the negotiating record that was available to us; found further that that negotiating record did not clear up the concern which we had, and he rightly pursued it, resulting in the exchange of letters between the two governments which have this morning, in the omnibus amendment that bears his name and others, been incorporated into the Record for this debate and formally incorporated into the Resolution of Ratification?

Mr. NUNN. The Senator is correct in the sense that we found that there was not a clear explanation from the administration on the question of futures. We found that the treaty did not clearly cover that. So we did not have either the treaty itself or the authoritative testimony to be able to answer those questions.

We posed questions to the administration. It took them 2 or 3 weeks to get back. We still, in answer to some of Senator QUAYLE's questions and some I posed, were not quite sure where they stood. Under that set of circumstances, we did feel it would be helpful for us to go to the negotiating history to determine if there is anything in the negotiating history that will shed light on this. I think we ought to do that in the future.

The Senator is right, we did not find anything in the negotiating history. Therefore, we put in an amendment.

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Mr. WILSON. Will the Senator yield on that point?

Mr. NUNN. Let me finish this thought, and then I will yield for a question.

Where we differ is we started by asking the questions; we started with the treaty; we started with the authoritative testimony. We could not get answers. Then we went to the negotiating history. That is a far different proposition than saying that everything they come up and testify to we have to then go to the negotiating history and read all of the negotiating history, even if it takes 700 hours, and then see if every detail of that authoritative testimony is incontroverted in the negotiating history.

That burden would basically put the Senate of the United States out of the treaty process, as a practical matter, because Presidents would not negotiate treaties if they knew they were going to have to take that degree of time.

The Senate of the United States, to take it further, and this is why I disagree so fundamentally with the Sofaer doctrine, would then have to come to the floor of the Senate and basically read into the Record all of that material, particularly anything that had any ambiguity to it.

We would have to take the negotiating history and spread it out. We would have to make all of that negotiating history public and it would back up on the executive branch because then they would have a hard time even having confidential conversations and communications in their negotiations. So the ultimate spinout of the Sofaer theory basically would put in supreme jeopardy the treaty-making power of both the executive and the legislative branches under the Constitution. I think we would be ill served by that kind of process, and I think our foreign policy would be damaged very severely.

I will yield for another question.

Mr. WILSON. I thank my friend from Georgia. I would point out that there was another instance in which the Senator felt it necessary to consult the negotiating record and that was in a rather obvious situation where the language was so awkwardly drawn, involving a double negative, that resort was necessary, because the authoritative representation really did not answer the question. We found that in the negotiating record there had been a requirement for a document about which we had not known and would not have known until we were into the questioning of the authoritative witness that resolved that conflict.

Let me ask my friend this question. Is it not true that just on the basis of the authoritative representations with respect to the issue of the force majeure issue, we did not realize we had a problem until such time as we consulted the negotiating record.

Mr. NUNN. I realized we had a problem in the double negative or triple

negative as soon as I read it, because I felt the only way I could understand it was to stand on my head.

Mr. WILSON. How about on force majeure?

Mr. NUNN. I am sorry?

Mr. WILSON. On the force majeure issue?

Mr. NUNN. I do not recall what alerted us to that one. I frankly do not know what alerted us to that one.

I am not saying to the Senator that the negotiating history has no validity, and I am not saying it has no role to play. What I am saying is that the burden must not be placed on the Senate, to take representations by the Secretary of State, the Ambassadors, and people who come up and testify and then put the burden on the Senate to go back and cross-examine all of that by doing a minute examination of the negotiating history. That is what I am opposed to.

I would be the first to say that the negotiating history has some bearing and at times needs to be consulted by both the Senate and the executive branch of Government. We will have to do that in the future, but that is a far different proposition than the bottom line that the Senator from California I believe advocates, and that is we have a duty to go behind every single piece of authoritative testimony and cross-examine it with volumes and volumes and volumes of negotiating history and with material that is not even in our possession and we will never have turned over to us by the executive branch.

Mr. QUAYLE. Will the Senator yield?

Mr. NUNN. Mr. President, I am going to have to yield on the Senator's time. I will be glad to yield on the time of the Senator from California.

Mr. WILSON. Mr. President, I will take my own time to merely make a response and then I will be happy to yield.

The PRESIDING OFFICER. The Senator from California then is recognized.

Mr. NUNN. I simply yield the floor at this time and the Senator can use his time.

The PRESIDING OFFICER. Is the Senator from California using his own 10 minutes or the time he is controlling for the minority?

Mr. WILSON. The time I am controlling for the minority such as I may require, which will be very little, to make response to my friend from Georgia.

The response is very simply this. He has said that he does not remember, and there is much to remember. I would simply remind him that it is the report of the Senate Armed Services Committee that makes clear it was the negotiating record which tipped us off to having a problem with the force majeure, potentially a very serious problem. In that instance and in many others, had we not looked at the negotiating record, even one which he

views as incomplete, we would not have been tipped off that problems existed.

Mr. President, when you are dealing with anything as complex as arms control negotiations—and I would remind my colleagues that what we are talking about in the INF Treaty is monumentally less ambitious and complex than that which we will undertake when, hopefully, we can achieve a START agreement, but when you are dealing with anything that complex there are bound to be omissions, there are bound to be ambiguities, there are bound to be inconsistencies in the testimony of the administration's presumably authoritative witnesses, as in fact there were in the 6,000 pages of testimony by authoritative witnesses which presumably under the Byrd substitute to the Biden-Pell amendment is now a part of the common understanding.

Let me tell you that common understanding is shot full of contradictions, inconsistencies between administration witnesses. So I have to disagree with my good friend, whom I so much admire, the chairman of my committee, and say I think it is the duty of the Senate, very precisely the duty of the Senate, not to look perhaps at every word in the negotiating record but certainly to consult that negotiating record, as indeed we did in this instance. Had we not done so, we would not have incorporated into the record of the Resolution of Ratification the very points that comprise it in the amendment offered this morning by the Senator from Georgia and others. Those would not have been discovered. They would not be now a part of the domestic law in the making of the United States.

It is very important, Mr. President, that we do not simply say, yes, this was a magnificent effort, this one time on this INF Treaty, which is of modest importance in comparison with what we hope to achieve under the START agreement that we hope may someday take place.

To say this was a one-time, magnificent performance but no precedent for how the Senate should conduct itself in the future, to say that the Senate should not undertake to monitor consistency in those so-called authoritative representations of the administration's witnesses with what was said and done by United States negotiators in Geneva is I think palpably ridiculous. It is to prescribe a dereliction of duty. Why did we do it in this instance? We did it in this instance because we learned from sad experience that in a prior test of the Senate in the performance of its responsibilities under the Constitution to ratify or to fail to recommend ratification on the ABM Treaty, not having the negotiating record led to the kind of debate that occupied so much of our time last year.

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We should avoid that kind of thing in the future. We should state that it is a part of the duty of the Senate to quite consciously look for the very sorts of things that we found in the negotiating record this time that alerted us to real potential problems. Those instances in which the text of the treaty is ambiguous are more obvious. Those instances in which there is inconsistency between the text and the negotiating record or between the authoritative representations of administration witnesses need to be resolved. We need to go to whatever competent evidence there is to clarify those inconsistencies and ambiguities, and we should begin, as we would in a contract, by going to the record of negotiation, if there is one.

It should be understood that it is the duty of the Senate in the course of performing its responsibility to recommend for or against ratification to compare treaty text and not only the authoritative representations but the negotiating record.

Mr. SARBANES. Will the Senator yield on that point?

Mr. WILSON. I will be happy to yield on the Senator's time rather than my own since we are using ours at a rapid clip.

Mr. SARBANES. I am in control of the time. I know Senator NUNN was yielding to that side on our time previously for questions.

Mr. EVANS addressed the Chair.

Mr. WILSON. Mr. President, I am prepared to yield the floor unless the Senator wishes me to yield for a question on his time. I am sorry to be ungenerous, but we do not have time to spare.

Mr. EVANS addressed the Chair.

Mr. WILSON. Mr. President, I yield to the Senator from Washington 10 minutes.

The PRESIDING OFFICER. Was there a time stated or was it an indefinite yielding? The Chair did not hear.

Mr. WILSON. Ten minutes, Mr. President.

The PRESIDING OFFICER. The Senator from Washington is recognized for 10 minutes.

Mr. EVANS. Thank you, Mr. President.

I agree wholeheartedly with the remarks of the Senator from California, and I will not attempt in my 10 minutes to say anything more about the negotiating record itself but to deal much more fundamentally with what I believe is at one and the same time a mischievous amendment or a nullity, one or the other, or both.

Mr. President, I think it is time to look pretty fundamentally at just what we are talking about because we are not dealing with what unquestionably would be the problems of the future after a treaty is ratified that will come before either this Senate or this country.

This amendment in its beginning talks about the Senate's advice and consent to the ratification of the INF

Treaty subject to the condition based on the treaty clauses of the Constitution. Of course it is. Any treaty is. The Constitution says that it has to be. Then it goes on to talk about in sub (1) the common understanding and in section IV it talks about the provisions of the treaty on which no common understanding was reached. Let me come back to where I think we will run into problems, but deal first with these elements of the amendment and why in this Senator's view they have virtually no real meaning.

In sub (1), "The United States shall interpret the treaty in accordance with the common understanding of the treaty shared by the President and the Senate at the time the treaty was ratified." Well, of course, we would not ratify unless there was that common understanding. We have gone through days and days of hearings in an attempt to reach common understanding. The very definition of common understanding is that both sides have the same view as to a particular provision. If that is true, there can by definition be no disagreement, and as a result there would be no problem.

It goes on further to talk about the basis on which this common understanding is reached. First, the text of the treaty and the provisions of this resolution of ratification—well, what an unnecessary thing to put in any kind of a resolution. Of course you base it on the text of the treaty and resolution of ratification. That is what we have had in front of us for the last 6 days. Second, the authoritative representations which were provided to the President and the President's representatives. The Senator from California has talked about the length and breadth of those representations. But of course, that is the second basis. The only disagreement really is to what degree the second basis, those representations, include or should include references to the negotiating record.

In sub (3) it says that "The United States shall not agree to nor adopt an interpretation different from that common understanding except pursuant to Senate advice and consent." Well, of course that is true. That is what the Constitution and the current laws of the United States require. If there is no common understanding, clearly, and was no common understanding at the time the treaty was ratified, because that is what you say in the beginning that is a requirement, then you have a big problem. But that big problem has another and far more fundamental way of resolution than what is attempted here.

Fourth, of course, it talks about no common understanding and that that provision shall be interpreted in accordance with applicable U.S. law. That is another interesting provision. What is the alternative to doing it in accordance with applicable U.S. law? Somebody else's law or do it unlawfully? The more carefully you read each element of this amendment, the more

redundant or mischievous it all appears.

Mr. President, let me refer in as basic terms as I can to the fundamental reference we all have to pay attention to. That is the Constitution itself. Nowhere in the legislative article, article I of the Constitution, are treaties mentioned at all except for the denial to a State of the United States to negotiate or sign a treaty. That is it.

In the executive article, we have the fundamental direction for the President. "He shall have power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; * * *"

Mr. President, there is a vast sea of difference between no common understanding and common understanding. We are dealing with the two ends of the spectrum in this resolution, or amendment. But it is in all that reading in between that we are going to run into problems in the future for this or any other treaty. What happens when a new element comes forth? What happens when the new distinction has to be made, and search as the people of that time might they can find no common understanding? If there is no common understanding, then by definition, you are into a dispute between the Congress—in this case, the Senate—and the President.

How do you resolve those disputes? We do not have to have an amendment here to resolve those disputes which are going to be the focal point of differences in years to come. Our forefathers decided long ago how to do that in the references in the judicial article of the Constitution, which says, "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; * * *"

Mr. President, that is the way to resolve disputes when they occur between this Senate and the President on misunderstandings or differences of understanding in the interpretation of treaties. We have had numerous occasions in our history where we have had differences between these two branches of Government. They have been resolved as they should be resolved by the Supreme Court of the United States. The *Chadha* decision is one of the more recent where they struck down our attempt to engage in a one-House veto.

Mr. President, finally, it seems to me that what we are attempting to do here in a stilted inappropriate and unnecessary way is to say much the same thing that our forefathers 200 years ago said in much more fundamental and elegant language, and that was in the provisions they put in the Constitution which for this Senator at least are plenty sufficient to handle the difficulties that are now in front of us.

I yield the floor.

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The PRESIDING OFFICER. Who yields time?

Mr. WILSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WILSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILSON. Mr. President, I yield to the Senator from Pennsylvania [Mr. SPECTER] 45 minutes.

The PRESIDING OFFICER. The Senator from Pennsylvania [Mr. SPECTER] is recognized for 45 minutes.

Mr. SPECTER. Mr. President, I thank my distinguished colleague from California.

I will choose to use part of it at this time and reserve the balance trying to save as much time as possible for later proceedings on this debate.

Mr. President, I am very much concerned by the debate as it is unfolding on this important condition, as amended by the amendment. In my view, this is really an unconditional surrender by the administration on matters of great importance on international treaty interpretation and U.S. constitutional law interpretation, a matter of unconstitutional surrender which is joined in by a number of my colleagues on this side of the aisle.

I submit, Mr. President, that this is an unconscionable rush to judgment as we are debating in the course of a very limited time span perhaps the most important constitutional issue which has been on this floor for many, many years, and perhaps decades. I would suggest, Mr. President, that the presentation of the so-called Byrd amendment at the last minute poses enormous problems on issues which we do not understand because of the late date of the arrival of this condition and the absence of certain important information for our consideration.

As to the issue of the unconditional surrender, when the administration and key Members from this side of the aisle have agreed with the Byrd amendment, it is enormously different from what the administration has staunchly contended up to as recently as May 19, last week.

At this time, I ask unanimous consent to have printed in the RECORD the full text of an extensive speech by legal adviser Abraham D. Sofaer, a speech which was given last week to the American Law Institute in Chicago, IL.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

TREATY INTERPRETATION AND THE SEPARATION OF POWERS
(Abraham D. Sofaer*)

Luncheons are not the time for lengthy lectures. Yet, this body thrives on serious stuff. And I came here, delighted to accept Rod Perkins' invitation, because I knew that you would have some interest in my topic: treaty interpretation and the separation of powers. While this is not generally seen as an exhilarating subject, Perkins has arranged the timing of the INF debate to give the topic special importance.

During October 1985, as you know, President Reagan announced that he had concluded that a broad interpretation of the ABM Treaty was "fully justified." The President also made clear, however, that he would not implement this interpretation until after consulting with Congress and our allies. Intense opposition arose to the interpretation, and while the Administration's position of the ABM Treaty's language and negotiating record became one focus of attention and debate, even more attention was given in the Senate to whether the President was bound to the restrictive interpretation of the treaty because of certain Executive branch representations made in 1972 during Senate ratification hearings. The particulars of the Senate record need not be examined here. The point presently at issue is whether the condition to the INF Treaty on treaty interpretation, currently proposed by the Senate Foreign Relations Committee, properly states the standards by which the legal effect of such records should be judged.

The rules that have traditionally governed treaty interpretation were recently restated in this Institute's Restatement of the Foreign Relations Law of the United States. A treaty between two or more states is an international agreement, "and is governed by international law."¹ International law establishes rules for the construction of treaties, based on the common understanding that exists or is exhibited between the signatories. Thus, the parties look first to the text, in context, to subsequent conduct, and in appropriate situations to the negotiating history.²

The Senate has broad authority to affect the meaning of treaties. It can "exclude, limit, or modify" an obligation of the United States by adopting a "reservation" which, to be effective, must be presented to and accepted by the other party.³ The Senate may also act by formulating a "statement of understanding" of the treaty's meaning, which it requires the President to present to the other party, but with respect to which it does not require acceptance. "When the Senate gives it advice and consent to a treaty on the basis of a particular understanding of its meaning, the President, if he makes the treaty, must do so on the basis of the Senate's understanding."⁴ The President makes a treaty on the basis of a specific understanding by communicating it to the other party prior to ratification. The other party is free to treat the understanding as "a reservation which it is not prepared to accept."⁵ Its failure to object is therefore powerful evidence that the understanding is mutual.

The Senate may also adopt particular understandings of a treaty's meaning which it does not require the President to present to the other party prior to ratification. When it does so the "treaty that is ratified or acceded to by the United States... becomes

effective in domestic law subject to that understanding."⁶ The Restatement makes no claim that "a statement of understanding" not communicated to the other party has any authority under international law on the treaty's meaning. Under domestic law, however, even "if no such statement is made, indication that the President or the Senate ascribed a particular meaning to the treaty is relevant" to its interpretation by a United States court "in much the same way that the legislative history of a statute is relevant to its interpretation."⁷ Such statements of understanding might be found, in addition to the Senate's resolution of consent, "in the report of the Senate Foreign Relations Committee and in the Senate debates." The relevant rule, "in that event," according to the Restatement, is that "the President must decide whether they represent a general understanding by the Senate and, if he finds that they do, must respect them in good faith."⁸

The ABM Treaty record of proceedings on advice and consent contains evidence of "particular understandings," which though not adopted as formal "statements of understandings," were generally held by the Senate, and on the basis of which the Senate gave its advice and consent. The Senate adopted no formal or informal "statement of understanding," however, to indicate that it had given its advice and consent to the ABM Treaty "on the basis of" the restrictive interpretation.

"Indications" do exist in the Senate record, however, in Executive testimony and statements of Senators, that support the restrictive interpretation of the ABM Treaty, along with indications that cast doubt upon that interpretation or support a broader interpretation. My report on this subject concluded that these indications were insufficient to establish a duty to respect the restrictive interpretation under domestic law, but were sufficient to require the President to decide, in accordance with the Restatement, whether "they represent a general understanding by the Senate" of the restrictive interpretation, and that if he found they do he "must respect them in good faith."⁹

In this discussion I will review the positions taken by the Administration and its opponents on the two principal issues posed by the proposed condition: first, the effect of informal Senate understandings under international law; and second, the standards by which such understandings are properly treated as binding under domestic law.

I. EFFECT OF INFORMAL SENATE UNDERSTANDINGS ON INTERNATIONAL OBLIGATIONS

The Administration believes that informal Senate understandings based on Executive branch statements have no binding effect on a treaty partner. Senator Sam Nunn disagreed with this view in March 1987, contending that the presence of a Soviet official at Senate ABM hearings put them on notice of what was said; even if the Soviets had not been present, Senator Nunn argued, they "understand how our treaty making process works, monitored the proceedings and reviewed the public records."¹⁰ Their "clear awareness of the interpretation being presented to the Senate," followed by their failure to object prior to ratification, provided the U.S. with "a very strong basis in law for insisting on the original meaning as presented to the Senate...." Senator Nunn concluded, moreover, that "it is contrary to the long-term interests of the United States to assert that statements made to the Senate have no standing with other parties to a treaty." The international community is "on notice that the executive branch ex-

* Legal Adviser, Department of State. This speech is the written text of a luncheon address given to the American Law Institute, Chicago, Illinois, May 19, 1988.

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plains treaties to the Senate during the ratification proceedings. It is to our national advantage to ensure that such authoritative explanations remain available as powerful evidence of a treaty's meaning in the event of an interpretive dispute among nations."¹¹

During March and April 1987, the Senate Foreign Affairs and Judiciary Committees held joint hearings under the chairmanship of Senator Joseph Biden to consider a resolution addressed to the ABM Treaty controversy. During the hearings on this resolution, I testified that, in determining the Soviet Union's international obligations, the President cannot safely rely on the Senate's "understanding" of the treaty, let alone an understanding based on "acquiescence." For the purpose of determining whether a treaty partner is bound, I said, "When [the Senate] gives its advice and consent to a treaty, it is to the treaty that was made, irrespective of the explanation [the Senate] was provided."¹² "This single sentence from my testimony, taken out of context, became known as the 'Sofaer Doctrine,' purporting to state that Presidents may freely disregard prior Executive positions. In actuality, in that testimony, and repeatedly thereafter, I noted with respect to domestic law, that 'the President cannot, and should not, disregard views expressed during Senate proceedings'"¹³

During those hearings, the claim that statements made in the Senate can be used to bind another treaty party to the meanings expressed was again advanced. Professor Tribe insisted, for example, that the Soviets could reasonably be expected to know what goes on in the Senate, and must realize that the treaty made is the treaty to which the Senate consents. "It is axiomatic, he said, 'that the treaty means what the Senate consented to.'"¹⁴ He rejected what he called "the Legal Adviser's model," which he understood to take the positions that "the meaning of the ABM Treaty is to be gleaned not by examination of what the President and the Senate agreed upon, but by examination of what the President and the Soviets agreed upon—regardless of what the President may or may not have told the Senate about what he had negotiated."¹⁵

The Joint Committee's report adopted Professor Tribe's view. It approved a resolution that declared that the President must interpret treaties in accordance with the common understanding of the President and Senate, express or implied from acquiescence in Executive representations. While it recognized the possibility of disparate obligations under international and domestic law, the report joined in the claim that the Soviets as well as the President would be bound:

[I]t is quite reasonable to expect—indeed, disingenuous to pretend otherwise—that other nations are sufficiently interested and capable to monitor U.S. ratification proceedings. Can anyone seriously believe that the Soviets have remained studiously oblivious to Senate proceedings with regard to arms control? The Committee is well aware of the contrary; Soviet diplomats are diligent in the extreme in monitoring deliberations of the Senate, most particularly on matters pertaining to U.S. Soviet relations.¹⁶

The Administration's study on the ABM ratification process was completed during May 1987. It concluded that international practice and governing law in fact lend no support to the notion that statements at proceedings before the Senate are a useful or proper device for binding our treaty partners to specific meanings of a treaty. Our treaty partners are undoubtedly aware of our system of treaty making, but it is hardly disingenuous to question whether they follow with care all Senate proceedings, or

derive clear messages from the Senate proceedings as to the meaning of given treaty provisions. Relatively little is clarified about most treaties, due to the lack of time. Senators are able to devote to their consideration.

Others nations are in any event unlikely to accept the premise that statements not formally communicated to them have binding effect on them with respect to a treaty's meaning. A particularly cogent illustration of this occurred when U.S. and Soviet negotiators discussed the specific issue of MIRV interceptors in 1981, in a formal bilateral exchange. The U.S. negotiator took the position that anything short of field testing of such interceptors was allowed under the ABM Treaty. The Soviet rejected that view, claiming that the U.S. could not engage in research on such an interceptor, as it could lead to a prohibited system. The U.S. negotiator then reminded the Soviets that Ambassador Smith had testified to the U.S. position at the Senate hearings in 1972, and that the Soviets (who were present for Smith's public testimony) should have objected if they disagreed. The Soviet negotiator responded that the USSR had set forth its view on the meaning of "development" during the ABM Treaty negotiation, and, if it differed from the view advanced in the Senate by Ambassador Smith, that was not the Soviet side's fault; the Smith statement was an internal matter.¹⁷ In 1979, when asked if the Soviets could be held to an agreement "as presented to Congress," Sidney Graybeal (an ABM negotiator) replied: "Presentations to Congress can help explain the language and how it was derived, but they should not change the meaning of the language or the scope of the provisions of the agreement."¹⁸

The United States has itself rejected suggestions that it is bound internationally by what is said in the Senate. For example, when a German civil court used statements made during U.S. Senate ratification discussions, to determine the intent of the parties to a treaty, Secretary of State Hughes instructed the U.S. Ambassador in Berlin that "expressions of opinion as the meaning" of the treaty involved "occurring in general debate, cannot be regarded as affecting the interpretation of that treaty."¹⁹ The U.S. would even more emphatically object to the use by other states of their own internal proceedings as a basis for binding the U.S. to a given meaning. Yet, reciprocity is a guiding principle in international affairs. If the U.S. is going to insist that foreign states follow and object to positions taken by Executive officials or Senators in our internal, advice-and-consent process, we would be obliged to shoulder the same obligations abroad. We could not do so without great additional effort, and in states such as the Soviet Union we could not do so in any meaningful sense. Furthermore, given the frequent ambiguity of such legislative history, this practice would add great uncertainty to the process of treaty formulation and interpretation, and would become a nightmare in connection with multilateral treaties.

The proper and workable rule was stated in a report on treaty procedures, prepared by the professional staff of the Senate Foreign Relations Committee in 1977. The study noted that Senate committee reports, and statements and colloquies by the floor manager, were intended to present the committees' understanding of the meaning of treaty provisions, but that these sources were "purely domestic documents and of no concern to the other party. . . ." ²⁰ This rule is implicit in the accepted Senate practice of formulating statements of understanding in some cases which it does not re-

quire the President to communicate to the treaty partner. The recognized legal effect of this practice is to condition the Senate's advice and consent under domestic law without requiring an assurance that the condition also binds the treaty partner.

The Senate did not act upon the ABM Treaty Resolution proposed by the Joint Committee, because Congress incorporated into the Defense Appropriation bill a provision prohibiting spending without specific appropriation on ABM development or testing that is inconsistent with the restrictive interpretation.²¹ President Reagan agreed to this provision in advance, thus accepting Congress, role and deferring the underlying controversy.

Submission of the INF Treaty to the Senate led, however, to renewed debate on the treaty-interpretation issue. The Administration received from several leading Senators demands for the treaty's entire negotiating record. These Senators claimed that, in light of the Administration's position in the ABM Treaty debate that the treaty to which the Senate gives its advice and consent is the treaty made by the parties, the Senate would need to check the negotiating record to be confident that the Executive branch had fully and accurately explained the treaty's meaning.²² Some Senators also threatened to condition their advice and consent with numerous reservations and understandings, because they thought the Administration had claimed it could disregard Executive branch statements.²³

The Administration responded constructively to both these concerns. First, we agreed that the Senate had a legitimate interest in the negotiating history, and supplied the whole record—31 binders of documents.²⁴ Secretary Shultz also provided a letter to deal with the erroneous assumption that the Executive branch was claiming the freedom to disregard its own presentations.²⁵ The Committee nonetheless decided to recommend to the Senate as a condition to its advice and consent to the INF Treaty, a declaration of the principles governing treaty interpretation.²⁶ While acknowledging that the ABM Treaty interpretation dispute should not be revisited unnecessarily, the staff report claims that the committee could not overlook the "constitutional assertion of a clearly delineated and unprecedented doctrine under which the President has wide latitude for treaty 'reinterpretations,' notwithstanding what the Senate may have been told in the course of granting consent to ratification."²⁷ Authority to disregard prior Senate statements would enable the President unilaterally to amend treaties, the report claims, contrary to the Senate's advice-and-consent authority.²⁸

In claiming that the "Sofaer Doctrine" entitles the President to disregard Executive representations to the Senate, the INF Treaty Report reiterates the erroneous premise adopted in the earlier Joint Committee Report. In fact, as the record demonstrates, the testimony cited as the Sofaer Doctrine related only to the nation's international obligations, and not to any domestic, constitutional limitation implicit in the advice and consent process. On this point, the INF Treaty report agreed with the Administration by acknowledging that the domestic representations of the Executive branch cannot be relied upon to bind the other party to a treaty under international law. The Committee ordered that its treaty interpretation resolution not be conveyed to the Soviet Union as part of the instruments of ratification, because it "viewed this as a matter of underscoring that the Condition is not directed to U.S. obligations under international law. . . ." ²⁹

II. EFFECT OF INFORMAL SENATE UNDERSTANDINGS UNDER U.S. LAW

The Administration has repeatedly recognized that informal Senate understandings based on Executive representations can result in binding commitments under domestic law. In my testimony before the Joint Committee I said, for example, that "the President cannot, and should not, disregard views expressed during Senate proceedings. . . ." ³⁸ I noted Secretary Shultz's statement that, while what is said during the ratification process in the U.S. is important to the Executive branch, "that has absolutely no standing as far as the Soviets are concerned." I said: "That is the point that we are making here today—insofar as the Soviets are concerned." We do believe that such statements have standing insofar as the Senate is concerned and insofar as our relationship with the Senate is concerned." ³⁹ I noted that my memorandum on the ABM negotiating record "is not addressed to any duties created by the entire ratification process for the President to the U.S. Senate. So, the President cannot and will not and does not disregard those statements." ⁴⁰ Despite the clarity of these statements, the Administration was accused of having advocated the proposition that the President is free to disregard Executive representations.

After its hearings, the Joint Committee adopted a resolution stating that, under the U.S. Constitution, the President is obliged to interpret all treaties in accordance with the "Senate's understanding." ⁴¹ The resolution in effect claims that only one treaty can exist, the one to which the Senate gives its advice and consent. The Administration agrees with this principle; the question is how one goes about determining the meaning of the treaty to which the Senate has given its advice and consent. The Joint Committee's Report asserts that sources upon which the President must sometimes rely in determining the parties' international obligations, particularly the negotiating history, cannot be relied upon if they have not been given to the Senate. The report rejects the "premise" on which it says the Administration's position is based—"that a treaty's meaning derives from communications between the parties. This is true," the report states, "under international law. But it is not true under United States law." ⁴² In the view of the Committee report, the President's broad power of treaty interpretation is limited by the constitutional principle that the President can only interpret treaties as they were understood by the Senate when it voted, and a Senate understanding need not be formally recorded, but may involve mere "acquiescence" in Executive statements or a host of other possibilities under what the report called a "rule of reason." ⁴³

The INF Treaty report follows in most respects the ABM Joint Committee report in its approach to the domestic law limitations on the President's power to interpret treaties. The proposed condition, as adopted by the Committee, notes that the "principles" it states are necessarily derived from the Constitution, an assertion that could be seen as an attempt to control the outcome of the ABM Treaty debate despite the report's claim to the contrary. ⁴⁴ The Resolution then goes on to state that "the United States shall interpret this Treaty in accordance with the understanding of the Treaty shared by the Executive and the Senate at the time of Senate consent to ratification." ⁴⁵ The "common understanding" thus referred to is, in the Resolution, "based on the text of the Treaty," and "reflected in the authoritative representations [concern-

ing meaning or legal effect] provided by the Executive branch to the Senate and its committees" in seeking consent to ratification. ⁴⁶ The President would be bound to this "common understanding" unless a change was authorized by amendment. In accordance with a procedure authorized by the treaty's terms, or in a subsequent statute. The report continues to rely on the claim that what it calls the Sofaer Doctrine would allow the President to disregard prior Executive statements to the Senate. ⁴⁷

Two important questions arise under the proposed condition: what is meant by "common understanding," and when is the evidence concerning a particular meaning sufficient to bind the President. The report explains the condition as intended to give overriding priority in treaty interpretation for domestic purposes to the representations of Executive officials. It states that any negotiating history, and presumably any subsequent practice, that is inconsistent with Executive representations considered binding must be subordinated to the meaning supported by the representations. ⁴⁸

In reaching this conclusion, the INF Report had to deal with the fact that the Executive has submitted to the Senate the full INF negotiating record. The Joint Committee Report rejected the relevance to the shared understanding of the Senate and President any negotiating history not submitted to the Senate, in itself a questionable conclusion. But why should the Senate not be assumed to have considered evidence actually received by it, pursuant to its request? The INF Report claims, in effect, with classic circularity, that because it is necessary to make Executive statements binding, any inconsistent materials, although accurate and truly authoritative, must be ignored. Thus, the report states:

If U.S. treaty interpretation is to be based upon the shared understanding of the Senate and the Executive at the time of ratification, and if the common understanding is reflected in authoritative Executive branch statements made in seeking Senate consent to ratification, then sources of interpretation which appear at variance must be subordinated to those authoritative statements. ⁴⁹

The INF report also deals with the standards by which the "common understanding" is to be determined, and at what point the evidence of a particular interpretation is to be deemed binding.

The Administration's position on this question draws once again on the Restatement, concluding that the President would be bound for domestic purposes if the Senate relied on a particular meaning as a basis for granting advice and consent, with the Senate's intent to be ascertained in much the same way courts determine whether Congress intended to bind the Executive in legislation. After examining the standards actually applied by the Supreme Court in recent cases, combined with the Restatement rules, we concluded that a particular interpretation would bind the President, despite the treaty's actual meaning, when it was "generally held by the Senate, relied upon, and clearly intended." ⁵⁰ The relevant cases fail to support the notion that acquiescence in Executive statements automatically creates a binding meaning. For legislative history to prevent the President from adopting a construction that is otherwise reasonable, the record as a whole must reflect a positive legislative determination to adopt a different interpretation. In the Japanese Whaling Association case the Court required deference to the Executive's construction of a statute "unless the legislative history of the enactment shows with sufficient clarity that the agency construc-

tion is contrary to the will of Congress." ⁵¹ Where no such express intent is found, subsequent agency interpretation—including reinterpretation—is generally accorded appropriate deference and held to a general standard of reasonableness. ⁵² And these standards should be applied to treaty interpretation with a special regard for the President's broad authority to interpret treaties and conduct foreign affairs. We did not conclude, however, that the Senate must adopt a formal "statement of understanding" to create a binding obligation. Our study in fact collected several examples from ratification records of cases in which the Senate manifested its intention through reports, in hearings, speeches, and colloquies which thereafter were treated by the Executive as creating binding obligations. ⁵³

The INF report condemns the criteria relied on by the Administration as having "no constitutional basis—no reference to the intent of the Framers, to historical precedent, to case law—no reference to any source of constitutional authority." ⁵⁴ Furthermore, the report argues, "while such terms as 'generally understood,' 'clearly intended,' and 'relied upon' may appear straight forward and appealing, in practice such criteria would be so difficult to meet that the Executive would almost never be bound by its own presentation to the Senate. . . ." ⁵⁵ These "unreasonable criteria," the report claims, would allow the President to "reinterpret" treaties in any way he chose, without constraint, conferring "an effective right of treaty amendment disguised as treaty interpretation." ⁵⁶

When the report turns, however, to the task of determining the criteria which it would advance to judge whether the President is bound by a particular though informal Senate understanding, the report agrees that the standards should be the same as those used in ascertaining legislative intent. Without citing a single such authority, however, the report asserts that "implicit" intent must be treated as equally significant to explicit intent, stating that "implicit understandings represent Senate agreement with and acceptance of the Executive's explanations of the Treaty . . . [which] although not formalized . . . must necessarily be equal in significance to explicit understandings. To accord them lesser significance would be illogical because implicit understandings commonly occur precisely where there is no disagreement as to meaning and where no issue has arisen." ⁵⁷ Congress' failure to act to alter the meaning in "unchallenged communications," expresses "acquiescence" in that meaning, and therefore an intention that it be maintained.

The report is correct in stating that "a rule of reason"—in which all the relevant circumstances are considered—should guide the determination of whether an Executive representation is "authoritative." But it is wrong to treat the Senate's "acquiescence" in Executive statements too readily as a basis for implying an intention to bind the President. In the absence of a formal "statement of understanding," the Restatement provides that the President must decide whether a particular understanding was "generally held" by the Senate, and whether the Senate gave its advice and consent "on the basis" of the understanding. ⁵⁸ This formulation may, in some instances, permit an inference of intent to bind from acquiescence, as where highly authoritative statements are made on an issue of fundamental importance to the treaty. The judicial precedents indicate, however, that binding legislative intent is formed only when Congress "has directly spoken to the precise

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question at issue."⁵¹ While courts have properly given "great weight" to authoritative statements on issues the record shows to have been a basis for legislative action,⁵² no case could be found in which such intent was established merely by Senate acquiescence in Executive testimony. This is hardly surprising, since the silence, for example, of a handful of Senators at a hearing, in the face of testimony of an official, bearing on an issue of less than central importance, is as likely to reflect the absence of any intention as it is an implied decision of the Senate to limit the President for all time.

On this issue, as on the status of informal understandings under international law, the differences between the Administration and Senate advocates of the proposed condition are narrowing. Senator Nunn, for example, recently testified that he agreed completely with the following excerpt from a letter by White House Counsel A.B. Culvahouse, restating the Administration position:

As a matter of domestic law, however, the President is bound by shared interpretations which were both authoritatively communicated to the Senate by the Executive and clearly intended, generally understood, and relied upon by the Senate in its advice and consent to ratification.⁵³

Senator Nunn said: "I don't think we are that far apart on the Constitution itself. I think this letter here comes a long way along that line."⁵⁴ (Senator Adams, who supports the proposed condition, agreed with this appraisal.)⁵⁵

The INF report exaggerates the dangers of accepting these standards. The rules to which the Administration agrees it is bound do not allow it to disregard either the Senate's intentions or the treaty's meaning. Where a conflict in fact exists between the treaty as made under international law and understandings generally held and relied on by the Senate in granting advice and consent, the President would be required to abide by his domestic obligation. No constitutional confrontation is created by this rare situation, since U.S. law accords priority to constitutionally based duties. Even where the President is free as a matter of law to construe a treaty in a manner that differs from an Executive representation, he is nonetheless obliged to act within the constraints of international law. He cannot "amend the treaty," but is allowed only to construe it in accordance with the text and negotiating history. Indeed, the freedom he has when these requirements for a binding domestic obligation are not satisfied is to adopt an interpretation that actually reflects the treaty's obligations, rather than being bound by representations that fail accurately to describe those obligations. He is limited here in the same way the Executive is limited in construing a statute; the construction must be reasonable or it can properly be regarded as in excess of his authority. And even though a reasonable basis exists for a particular construction, nothing prevents the treaty partner or Congress from exercising all lawful pressures to prevent its adoption or implementation. An interpretation need not be found unlawful to be deemed unwise.

The actual effects of the condition proposed for the INF treaty would prove detrimental to the nation's interests if adopted. First, the rules proposed would upset established standards of treaty interpretation, based on commonly accepted principles of international law. By insisting on a meaning for treaties derived from unilateral Executive representations the Senate would signal to U.S. treaty partners a broad discretion to invoke domestic law to disregard the treaty actually made. In some instances this may please the treaty partner, which may want

to see the U.S. restrained to a particular rule. But as a general matter it will tend to create additional uncertainty in a process that is already complex. We would resist such a claim by any of our treaty partners, to avoid the uncertainties and burdens it would entail. Furthermore, the proposed condition would by definition only have practical effect in situations where the treaty partner is not bound by the same standard to which the condition would bind this nation. This is an undesirable consequence, and it should be restricted to those situations in which the record truly reflects a generally held intention on the Senate's part to rely on the meaning at issue.

It is simply wrong, moreover, to claim that one demeans the Senate's role by saying the Senate gives its advice and consent to the treaty made between the parties. The Senate's constitutional role is to pass on the international agreements that are actually to be made at ratification, not to insist on limiting the U.S. unilaterally on the basis of evidence of a domestic understanding that a Senate majority later deems sufficient to be a binding interpretation. The Senate is entitled to proper respect, and to a full and accurate explanation of treaties. But it is entitled to receive—and obliged to give—far more. It is entitled and obliged to determine the true meaning of treaties, and jointly with the President to decide whether and in what form they should be ratified. It demeans the Senate's role to suggest that it will rely upon the power to insist that Executive representations be binding irrespective of a treaty's true meaning, rather than participating as a partner in ascertaining the true meaning and shaping it as necessary through proper means.

In fact, the Senate in considering the INF Treaty has acted in accordance with its constitutional responsibilities. On a series of issues concerning which Senators found ambiguity, including the regulation of INF missiles that would be equipped with future forms of weapons, they were unwilling to accept Executive representations, however explicit, authoritative, and often repeated. They wanted to know what the parties to the treaty had actually agreed on each of these issues, and to find that out they examined the relevant negotiating history. When that history failed to satisfy concerned Senators as to the treaty's negotiated meaning, they asked the Executive to go back to the Soviets for clarification. We saw, in short, a demonstration of the Senate playing its intended role by exercising its constitutional authority to assure itself that it understood and found acceptable the treaty to which it was considering giving its advice and consent. The law should not be distorted in order to create a standard for implying binding domestic obligations that is designed to accommodate a record in which the Senate failed to perform this role. If adopted, the condition could readily be used as a vehicle for binding the President to Senate treaty interpretations based on mere acquiescence in Executive representations, thus impinging upon the President's recognized authority.

III. CONCLUSION

The treaty interpretation debate continues. This review of the issues shows, however, that the differences have narrowed considerably.

Both sides in the debate agree that a shared or common understanding in the Senate, if based on Executive representations, cannot be used to bind treaty partners to a meaning other than that established under international law.

Both agree that the President cannot disregard Executive statements to the Senate,

and may in proper circumstances be bound by such statements under domestic law.

Both largely agree on the standards for determining if the President is bound domestically: a rule of reason, reference to cases on legislative intent, and the need to establish a generally held understanding on which the Senate relied.

The remaining differences should be overcome. We intend to keep working so that President Reagan gets to go to Moscow with the INF Treaty ready to ratify, thus concluding a strategic plan that is a bipartisan triumph. We must also succeed, however, in preventing misunderstanding and interbranch rivalry from distorting the law governing treaty interpretation and the advice-and-consent process. I am grateful for this opportunity to address you on this subject.

FOOTNOTES

¹ Restatement (Third) of the Foreign Relations Law of the United States (hereinafter "Restatement") § 301.

² Id. § 325.

³ Id. § 313, comments f and g.

⁴ Id. § 314.

⁵ Id. § 313, comment g.

⁶ Id. § 111 (emphasis added).

⁷ Id. § 314, comment d.

⁸ Id. *Ibid.*, (emphasis added).

⁹ Id. *Ibid.*; see Office of the Legal Adviser, The ABM Treaty Studies Part II: The Ratification Record (hereinafter "ABM Treaty Study Part II") 27-29 (May 11, 1987).

¹⁰ Id. § The ABM Treaty and the Constitution, Hearings before the Committee on Foreign Relations and Committee on the Judiciary, S. Hrg. 100-110, (hereafter "Hearings") at 59 (statement of Honorable Sam Nunn).

¹¹ Id. at 59-60.

¹² Hearings at 130 (statement of Abraham D. Sofaer).

¹³ Id. at 128. See *ibid.* (explaining that testimony concerned "the evidentiary value of ratification proceedings in the context of determining international legal obligations"); *infra*, text accompanying notes 30-32; see also letter from Abraham D. Sofaer to the Editor, Time Magazine, March 11, 1987, explaining that, while executive statements to the Senate cannot change the nation's international obligations under the treaty, such statements could create domestic obligations under the Constitution.

¹⁴ Hearings at 415 (prepared statement of Laurence H. Tribe).

¹⁵ Reprinted in The ABM Treaty Interpretation Resolution, S. Rep. 100-164, 100th Cong. 1st Sess. 57 (hereinafter "Report on The ABM Treaty Interpretation Resolution") (September 22, 1987) (emphasis in original).

¹⁶ Report on the ABM Treaty Interpretation Resolution at 59.

¹⁷ ABM Treaty Study Part II at 41.

¹⁸ Briefing on SALT I Compliance: Hearing before the Senate Comm. on Foreign Relations, 96th Cong., 1st Sess. 13 (1979); quoted in ABM Treaty Study Part II at 41, text at note 73.

¹⁹ Secretary of State Hughes to Ambassador Houghton, July 30, 1923, reprinted in 5 G. Hackworth, Digest of International Law 262 (1943); quoted in ABM Treaty Study Part II at 38.

²⁰ Staff of the Senate Comm. on Foreign Relations, 95th Cong., 1st Sess. (Comm. Print 1977) at 13.

²¹ Section 225 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Pub. L. 100-180, 101 Stat. 1019, Dec. 4, 1987) provides that no funds available to the Department of Defense may be obligated or expended for any development or testing of ABM systems or components except those described in the Administration's April 1987 Strategic Defense Initiative Organization Report, which the Senate Armed Services Committee considered to be consistent with the narrow interpretation of the ABM Treaty.

²² E.g., Letter from Senator Byrd to Secretary of State Shultz, October 15, 1987; Letter from Senator Nunn to President Reagan, September 1, 1987. See also Letter from Senator Pell to Secretary of State Shultz, November 30, 1987.

²³ E.g., Letters from Senators Byrd and Nunn, *supra*, note 22.

²⁴ Letters from Secretary of State Shultz to Senators Byrd and Dole, February 5, 1988.

²⁵ Letter from George F. Shultz to Honorable Sam Nunn, February 9, 1988, reprinted in Commit-

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tee on Foreign Relations, The INF Treaty, 100th Cong., 2d Sess. ("hereinafter INF Treaty Report") 442 (April 14, 1988).

²⁶ The proposed condition would provide:

That this Treaty shall be subject to the following principles, which derive, as a necessary implication, from the provisions of the Constitution (Article II, section 2, clause 2) for the making of treaties:

(a) the United States shall interpret this Treaty in accordance with the understanding of the Treaty shared by the Executive and the Senate at the time of Senate consent to ratification;

(b) such common understanding is:

(i) based on the text of the Treaty; and

(ii) reflected in the authoritative representations provided by the Executive branch to the Senate and its Committees in seeking Senate consent to ratification, insofar as such representations are directed to the meaning and legal effect of the text of the Treaty;

(c) the United States shall not agree to or adopt an interpretation different from that common understanding except pursuant to Senate advice and consent to a subsequent treaty or protocol, or the enactment of a statute.

This understanding shall not be incorporated in the instruments of ratification of this Treaty or otherwise officially conveyed to the other contracting party.

²⁷ INF Treaty Report at 436.

²⁸ INF Treaty Report at 89.

²⁹ Id. at 90-91.

³⁰ Id. at 99-100.

³¹ Hearings at 128.

³² Hearings at 129.

³³ *Ibid.*

³⁴ Resolution Concerning Constitutional Principles Pertinent to the Making of Treaties, and Further Concerning the Interpretation of the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems, S. Res. 167, 100th Cong., 1st Sess.

³⁵ Report on the ABM Treaty Interpretation Resolution 55.

³⁶ Id. at 40.

³⁷ INF Treaty Report at 436.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ INF Treaty Report at 90-94.

⁴¹ Id. at 101.

⁴² *Ibid.*

⁴³ Letter from White House Counsel A.B. Culvahouse to Honorable Richard G. Lugar, March 17, 1988, reprinted in INF Treaty Report at 443-445, at 444.

⁴⁴ *Japan Whaling Association v. American Cetacean Society*, 106 S.Ct. 2860, 28 ___ 92 L.Ed.2d 166, 181 (1986).

⁴⁵ See, e.g., *Chevron, U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 857-58 (1984) (agency had formerly adhered to one interpretation of the relevant statute, but had adopted the different interpretation at issue after "a new administration took office and initiated a 'Government-wide reexamination of regulatory burdens and complexities'").

⁴⁶ ABM Treaty Study Part II at 50-55.

⁴⁷ INF Treaty Report at 90-91.

⁴⁸ Id. at 91.

⁴⁹ Id. at 90.

⁵⁰ Id. at 93.

⁵¹ Restatement § 314.

⁵² See *Chevron*, 467 U.S. at 842.

⁵³ See *United States v. Vogel Fertilizer Co.*, 455 U.S. 16, 31-32 (1982) (relying on executive testimony explaining a bill drafted by the Treasury Department when "[t]he subsequent legislative history of" the statute—including the report on the bill by the relevant House committee—"confirms that Congress adopted not only the proposal of the Treasury Department, but also the Department's explanation and interpretation").

⁵⁴ Hearings before the Committee on Foreign Relations, S. Hrg. 100-522 Part 5 at 144 (testimony of Honorable Sam Nunn) (March 22, 1988).

⁵⁵ *Ibid.*

⁵⁶ Id. at 153.

Mr. SPECTER. Mr. President, I ask unanimous consent to have printed in the RECORD the text of the letter from legal counsel A.B. Culvahouse dated March 17.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,

Washington, March 17, 1988.

Hon. RICHARD D. LUGAR,

U.S. Senate,

Washington, DC.

DEAR SENATOR LUGAR: This letter responds to your letter to Howard Baker of March 9, 1988. The Administration has reviewed the attached March 2 draft of a proposed Senate resolution of advice and consent to the ratification of the INF Treaty.

For the reasons discussed below, the Administration believes that sections 1 and 2 of the Resolution (hereinafter these sections are referred to as the "Resolution") are seriously flawed. The Resolution would change the legal rules of treaty interpretation. It would impose an unconstitutional mechanism for the alteration of a treaty interpretation. Moreover, it would greatly increase the risk of inflexible distinctions between the meaning of a treaty for purposes of international law and its meaning for purposes of domestic law—distinctions that could operate to the disadvantage of the United States.

Therefore, we believe the Resolution is not in the best interests of the United States.

Changing the rules of treaty interpretation:

We agree that the Executive is, as a matter of domestic law, required to adhere to the interpretation of a treaty authoritatively shared with, and clearly intended, generally understood and relied upon by, the Senate at the time of its advice and consent to ratification. The Resolution, however, would purport to expand the Executive's obligation beyond this settled principle. Sections 1(b) and 2 of the Resolution apparently would define that shared understanding as encompassing all statements made by officials of the Executive branch during ratification proceedings. These statements presumably include and attribute equal dignity to the Secretary of State's definitive article-by-article analysis and to the extensive testimony of Cabinet Members, treaty negotiators and other Executive branch officials, as well as to the Administration's answers to over 1,000 questions submitted by Members of the Senate, no matter how trivial or how unimportant the issue addressed may be to the Senate's advice and consent deliberations.

This overly broad standard is inconsistent with the principles governing judicial interpretation of treaties as a matter of domestic law. Such a general statement would not in our view provide the guidance required for the President or a court to give meaning to the INF Treaty.

Section 1 of the Resolution focuses solely on the role that Executive representations play in the interpretation of treaties, but fails to acknowledge the most important interpretative tool—the text of the treaty itself. Ignoring the text of the treaty is inconsistent with bedrock rules of treaty interpretation, which mandate that the text is the best evidence of the parties' intent. Although "authoritative representations" are among the tools for interpreting ambiguous provisions in a treaty under domestic law, the language of the treaty is the primary means by which a treaty is interpreted.

Unconstitutional mechanism for altering treaty interpretation:

Section 1(c) of the Resolution would purport to grant the Senate a role in interpreting treaties not contemplated by the Constitution. Section 1(c) states that the "United States shall not agree to or adopt [a different] interpretation" of a treaty "without the approval of the Senate." This provision of the Resolution and the Section 1(b) incorporation by reference of all Executive

statements as critical shared understandings purport to provide the Senate with an ongoing power to accept or reject subsequent Executive interpretations and implementations of the INF Treaty. A "reinterpretation," subject to Senate approval, seemingly would occur each time implementation of the treaty calls into question any Executive statement in the massive ratification record. This section, therefore, interferes with the President's constitutional responsibility to interpret and implement treaties and also constitutes an unprecedented arrogation of treaty power by the Senate.

The Constitution does not provide that treaties may be amended by the Senate and the Executive acting alone after ratification, nor does it permit unicameral "interpretive" legislation. The provisions in Sections 1(c) and 2 that contemplate such a process are not consistent with the Constitution.

Risk of unilateral restrictions on the United States:

As noted above, when interpreting a treaty, one obviously looks first and foremost to the text of the treaty itself. In instances where the treaty text is not dispositive or is unclear, under international law one looks primarily to the negotiating record and the subsequent practice of the treaty parties. As a matter of domestic law, however, the President is bound by shared interpretations which were both authoritatively communicated to the Senate by the Executive and clearly intended, generally understood and relied upon by the Senate in its advice and consent to ratification. This is true even if the treaty negotiating record and subsequent practice indicate an interpretation contrary to that shared understanding. Exchanges in Senate proceedings in connection with the ratification of a treaty cannot under international law alter the meaning of a treaty where they are not officially communicated to the other treaty party prior to the exchange of instruments of ratification. The result might be two INF treaties, one binding domestically against the President and a second one binding internationally between the United States and the Soviet Union. In our view, the Resolution would substantially increase this risk of a dichotomy between the interpretation of a treaty under international law and the interpretation to which the President constitutionally is bound under domestic law. While we have spared no effort to ensure that Administration statements reflect the correct interpretation of the INF Treaty, the magnitude of the record heightens the risk of divergence between our domestic and international legal obligations. Any such difference will favor the Soviet Union because the Soviet Union is not and cannot be bound by our domestic processes.

The principles of treaty interpretation stated herein in no way contradict the position previously taken by the Administration with respect to the ABM Treaty. The President is obligated to abide by a treaty interpretation clearly intended, generally understood and relied upon by the Senate, based on authoritative Executive Branch representations during its advice and consent to ratification. Our position in the ABM case is not that the President may disregard such clearly intended interpretations, but rather that the ABM Treaty ratification record does not establish as a matter of law that the Senate clearly intended that the restrictive interpretation be followed. Administration witnesses had presented inconsistent and ambiguous views on the reach of these provisions, and the Senate as a whole did not assert a view. The President, therefore, is legally entitled to interpret the ABM

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Treaty on the basis of materials other than the ratification record, including the negotiating history. As you know, we believe that the negotiating record shows that the Soviet Union did not agree to be bound to the restrictive interpretation.

This letter is presented in a spirit of cooperation and in the hope that the Senate and the Executive can agree that the INF Treaty should receive the advice and consent of the Senate without any conditions. We do not believe that it is necessary or desirable to address broad, free-standing constitutional principles in a resolution of advice and consent. We believe that the proposed Resolution only serves the interests of confusion, ambiguity, confrontation and uncertainty. This Administration, of course, intends to consult closely with the Senate as the INF Treaty, upon ratification, is implemented and interpreted, and we will continue to embark upon such consultation in candor and good faith.

This letter also reflects the views of the legal offices of the Department of State, Department of Defense, the Office of Legal Counsel, Department of Justice, the Arms Control and Disarmament Agency, and National Security Council.

Sincerely,

ARTHUR B. CULVAHOUSE, Jr.,
Counsel to the President.

RESOLUTION OF RATIFICATION

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to ratification of the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles and the two Protocols thereto, together, referred to as the INF Treaty, all signed at Washington, on December 8, 1987 (Treaty Doc. 100-11), subject to the finding contained in Section 1 and the condition contained in Section 2:

SECTION 1. FINDING CONCERNING CONSTITUTIONAL PRINCIPLES.

The following principles derive, as a necessary implication, from the provisions of the Constitution, Article II, section 2, clause 2, for the making of treaties:

(a) the United States shall interpret in accordance with the understanding of the meaning of the treaty shared by the Executive and the Senate at the time of Senate consent to ratification;

(b) such common understanding is reflected in authoritative representations as to the meaning of the treaty provided by the Executive branch in seeking Senate consent to ratification;

(c) the United States shall not agree to or adopt an interpretation different from that common understanding without the approval of the Senate.

SEC. 2. CONDITION OF SENATE ADVICE AND CONSENT.

The Senate's advice and consent to ratification of the INF Treaty is subject to the condition that the United States shall interpret the INF Treaty in accordance with the principles cited in Section 1 of this Resolution.

Report Language: "This provision is not designed to resolve the dispute over alleged ambiguities in the genesis, design, and implementation of the ABM Treaty, or to constitute a final disposition of the ABM Treaty 'reinterpretation' issue. Rather, the provision is intended to affirm certain constitutional principles which have been brought into question during the 'reinterpretation' debate."

Mr. SPECTER. Mr. President, these documents and the underlying legal

arguments are directly at variance with the substance of the so-called Byrd amendment, and a comparison of these documents shows the unconditional surrender by the administration on these issues of really great importance.

Last week, there was an interesting exchange on the floor of the Senate. I have just asked to notify the distinguished majority leader that I would be making reference to some of his arguments, and I repeat that at this moment. The majority leader was commenting about the distinguished Senator from New Hampshire [Mr. HUMPHREY] not disclosing an amendment, and the allusion was made to a switchblade knife that Mr. HUMPHREY was allegedly carrying in his pocket. The request was made that the amendment be made available so that it would be known to people as to what was going to be argued.

Yesterday morning, at the conclusion of morning business, I asked the distinguished majority leader about an amendment which I had heard he was going to offer to the Biden condition. It was not yet available, but I got a copy of it late yesterday afternoon. The amendment has been forwarded by the distinguished majority leader, Senator BYRD, and it is a different amendment, not enormously different. But I would suggest, Mr. President, that the issues involved here are so complex and so important that there is a necessity for some time to study the issues which are involved and to compare the specific language with the Biden condition.

I have referred to the allusion of the switchblade knife because I believe that the pending amendment is a switchblade knife aimed at the security of the United States, in what is done here, because the reality is that it imposes a burden on the United States which is not imposed upon the Soviet Union.

The thrust of what has been argued here today and what is set forth extensively in chapter 9 of the Foreign Relations Committee report on the Biden condition is a long-studied argument over the ABM Treaty. The thrust of what is argued versus narrow and broad in the ABM Treaty is to impose an obligation on the United States, through the so-called understanding of the Senate, which is not binding on the Soviet Union.

What we really have here, on the Biden condition, slightly modified by the Byrd condition, is a document of two treaties: one treaty between the executive branch and the Soviet Union and a second treaty between the executive branch and the Senate of the United States.

Mr. President, it is plain on a reading of the ABM documents that the United States tabled the narrow interpretation and the Soviets rejected. The Soviets had the latitude for the broad interpretation until they found

it to their benefit to come back to a narrow interpretation.

The United States has been driven, is being driven, to the narrow interpretation by references in the ratification record to the so-called narrow interpretation. This works to the decisive disadvantage of our country, in terms of the strategic defense initiative, which costs billions more when restricted to the narrow interpretation, and in terms of a much longer process for experimentation.

As I have said on this floor before, and as my voting record shows, I have not been an advocate or devotee of the strategic defense initiative; and until the most recent vote, I continuously voted for lesser funding.

I say that if the ABM Treaty binds the United States to the narrow interpretation, so be it; but if it does not, it is inappropriate, in terms of our national security, to aim a switchblade knife at the heart of our security by holding the United States to an interpretation which is different from the obligation of the Soviet Union. That is precisely the thrust of the narrow interpretation, and that is precisely the thrust of this Byrd condition, and that is the impact of what will happen here today.

What we are dealing with, realistically, is two treaties: one to be used at the pleasure of the Soviet Union, and a more restrictive one in terms of what happens on United States obligations.

Mr. President, the Byrd condition, like the Biden condition, stands the international law of treaty interpretation on its head, because international law in treaty interpretation has, as a fundamental requirement, mutuality. The United States cannot be bound, realistically, if the Soviet Union is not bound. But the Biden condition and the Byrd condition impose upon the United States a greater obligation by holding the United States to what some may say is the Senate's understanding. There is no question that the Soviet Union is not bound by the Senate's understanding.

Some references have been made to that by the distinguished Senator from Georgia, and perhaps in this debate we will have an opportunity to see if he really contends that the Soviet Union is bound by what goes on in Senate ratification proceedings; but the clear law is that the Soviet Union is not so bound.

What is endeavored here today is to make the United States bound on tighter restrictions than those which apply to the Soviet Union.

Mr. President, the thrust of the Biden condition and the Byrd condition has the same fatal flaw, but the thrust of the Biden condition is to render irrelevant the negotiating record, which is a cardinal principle of international law treaty interpretation.

The distinguished Senator from Georgia [Mr. NUNN] was on the floor a

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few moments ago—and I have sent notice through staff that I would be referring to this—saying that the negotiating record is important. Certainly it is under all standards of international law. But what does the Biden condition and what does the Byrd condition do with the negotiating record?

According to the Foreign Relations Committee report, it makes it immaterial. At page 101 of that report:

"Such documents"—referring to the negotiating record—"need not have been examined for consistency and should not be deemed material to U.S. interpretation of the INF Treaty insofar as they are inconsistent with the executive branch formal presentation of the INF Treaty."

Can you imagine that under a condition adopted by this body today the negotiating record is immaterial?

I have already introduced into the RECORD voluminous authorities from the Supreme Court of the United States, the prestatement of foreign relations law, consented to by most Members of this body, that state that the negotiating record is an indispensable tool on treaty interpretation. But under the Biden condition and the Byrd condition the negotiating record is deemed irrelevant and that is an underlying fallacy of this condition.

The Biden condition and the Byrd condition as well turn upside down U.S. constitutional law interpretation because they develop a new theory, a new approach on what they call implicit understandings. I have sought to find any authority for the so-called implicit understandings. We know of reservations. We know of expressed understandings. We know of a managers report. We know of dialog on the floor where a question is asked of the managers of a bill.

But this condition brings forward a new concept which is revolutionary and extremely destructive because it is up to anyone's guess as to what will happen with respect to such implicit understandings.

Mr. President, one of the leading proponents for the Foreign Relations Committee report has been Professor Henkin, who was the chief reporter for the restatement of foreign relations law on international treaty conditions, and I believe that Professor Henkin's views are very important for our consideration here today. Yesterday I had directed a question to the distinguished majority leader about two letters from Professor Henkin. I have since obtained one from staff, and I would appreciate obtaining the other.

But Professor Henkin's letters are very important not only because his opinions are referred to in the text of the Foreign Relations Committee report and not only because he is the chief reporter for the restatement of foreign relations law on this important subject, but because he puts on the record his view that it is unwise to

have a condition attached to a treaty like this one.

I had an opportunity to talk to Professor Henkin yesterday, and I have sought the documents. I have read the second letter made available by staff. But I state flatly that it is not possible in the course of a few minutes to digest and to interpret that letter. I cannot make it a part of the RECORD.

I ask unanimous consent that a letter from Professor Henkin dated May 24, 1988, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

TEXT OF LETTER MAILED ON MAY 24, 1988

MR. JOHN B. RITCH III,

Deputy Staff Director, Senate Foreign Relations Committee, Washington, DC.

DEAR MR. RITCH: It has come to my attention that I have been quoted as saying that the Senate Foreign Relations Committee Report on the INF Treaty misrepresented my views. I have made no such statement and that is not my view. I did express some concern that, in view of the way my name was used in the Report, a reading—surely a quick reading—of the Report might lead the reader to believe that I was behind the Report's statement of, and attack on, the so-called Sofaer Doctrine and that I favored the addition of the Condition on interpretation.

Let me make my position clear. I discussed the substance of the statement of Constitutional principle with you and others; I agree that what has emerged in that respect is substantively sound. As I said from the beginning, however, I am not in favor of making a statement of Constitutional principle a condition of Senate consent. If the Senate thinks it is necessary or desirable to declare its views of Constitutional principle—which in the present instance I agree are sound—it should put them into a separate Resolution.

The Committee draft in effect combines two resolutions: it combines an understanding, stated as a condition, on the interpretation of the particular INF Treaty (which condition is binding on the President, and on future Presidents) with a statement of general Constitutional principle (which is not binding on anyone). If there is insistence that the reference to Constitutional principle should be included, the text as it appears in the Committee Report is not unsound. The condition is applicable to the interpretation of this Treaty and as such is binding on this and any later President; the statement of Constitutional principle is included only parenthetically in a kind of editorial reference in passing. Perhaps it would be better to make the parenthetical character of the reference to the Constitutional principle even clearer by adding a few words, so that the introductory phrase would read:

That the Treaty shall be subject to the following principles, which, in the judgment of the Senate, derive, as a necessary implication, etc.

All good wishes.

Sincerely,

LOUIS HENKIN.

Mr. SPECTER. I consider this to be of enormous importance, Mr. President.

I am going to conclude the first portion of my time with these comments: I believe that I said during opening statements that I thought the INF

Treaty was a very important treaty, but I am, frankly, not so sure any more, with the Biden condition or Byrd condition. We are going to be paying a very, very high price for this treaty. It is a very valuable commodity, but it may not be worth the price we are being asked here to pay today, and that is something I am reflecting on.

I believe there are many Senators who are concerned about what is happening with this treaty when we are adding on these conditions, which devastate international law in treaty interpretation and decimate U.S. constitutional law on treaty ratifications. These are matters that are going to have to be considered and thought hard by quite a number of Senators between now and the time of final passage.

Mr. President, it may be that the most we will be able to do here is to establish a record, a record which will be viewed by other Senators and other Senates on another day, very much in the nature of a dissenting opinion in the Supreme Court of the United States where frequently a dissent later becomes the law of the land. A dissent of one man against eight in *Plessy* versus *Ferguson* on desegregation later became the law of the United States in *Brown* versus *Board of Education* as what equal protection meant.

Right now this body, I submit, is on a very dangerous course. We are being propelled on a frantic rush to judgment. We are being propelled in a context where materials were not made available like the Henkin letter, in a context where we have had a very limited amount of time to examine this document. We are propelled by the interest of many of the Democrats in the narrow interpretation of ABM. We are being propelled by many Republicans on an effort to reach a conclusion on this matter today, tomorrow, or Saturday.

So, it may be that in terms of what we are doing here today, those of us who are advancing legal arguments and resisting the changes in international law and changes in U.S. constitutional law, may be putting into the CONGRESSIONAL RECORD the statements which will be picked up another day, very much as *Plessy* versus *Ferguson* may be picked up.

Mr. President, I ask unanimous consent that a statement of law on the implications of the Biden condition which will be equally applicable to the Byrd condition be printed in the RECORD at this point as if read in full.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

IMPLICATIONS OF THE BIDEN CONDITION

Mr. President, I am opposed to the so-called Biden condition, which I more appropriately refer to as the ABM reinterpretation condition, because it revises international law on treaty interpretation, confuses U.S. constitutional law on treaty ratification, and interjects in the deliberations on

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the INF Treaty an attempt to resolve the continuing dispute over the ABM Treaty.

As I stated on this floor on May 18, inclusion of the ABM reinterpretation condition is the resolution of ratification by the Senate Foreign Relations Committee has proven to be a detrimental factor in debate on the INF Treaty which continues to threaten the treaty's ratification.

The ABM reinterpretation condition poses three serious implications for treaty interpretation. The condition would: First, fundamentally change international law on treaty interpretation; second, change and confuse U.S. constitutional law regarding the Senate's role in the treaty ratification process; and third, necessarily implicate the complex facts of the ABM Treaty and its interpretation.

I. INTERNATIONAL LAW ON TREATY INTERPRETATION

Mr. President, the ABM reinterpretation condition fundamentally changes international treaty interpretation.

The ABM reinterpretation condition establishes, in effect, a two-treaty doctrine, where there is a treaty between the executive branch and the Soviet Union and simultaneously a second treaty between the executive branch and the U.S. Senate. This concept is discussed at length in chapter IX of the Senate Foreign Relations Committee report on the INF Treaty entitled "Treaty Interpretation, condition adopted by the committee," which, in effect, gives primacy to the agreements reached between the executive branch and the Senate. The committee report's analysis of the ABM reinterpretation condition creates confusion and contradiction in the treaty ratification process, and represents a turf battle between the two branches.

Although it includes reference to the "common understanding" between the executive branch and the Senate "based on the text of the treaty" and "authoritative representations," the ABM reinterpretation condition elevates the provisions of the understanding reached between the executive branch and the Senate, making them paramount to the understanding between the executive branch and the foreign nation. Subsection (a) of the condition reads:

The United States shall interpret this treaty in accordance with the understanding of the treaty shared by the executive and the Senate at the time of Senate consent to ratification.

Chapter IX of the Senate Foreign Relations Committee report includes a number of references establishing the committee's priorities in the treaty ratification process. For example, the committee report states:

The Legal Adviser's statement implies that the meaning of a U.S.-Soviet treaty is to be gleaned not by examination of what the President and the Senate jointly understood, but by examination of what the President and the Soviets agreed upon—regardless of what the President may or may not have told the Senate. Report at 92.

This statement and other similar statements throughout chapter IX of the committee report establish the committee's view and the underlying doctrine of the ABM reinterpretation condition that the paramount consideration in treaty interpretation is what was agreed upon between the President and the U.S. Senate.

Mr. President, a treaty is valid and binding only if it establishes mutual obligations between the two contracting parties—in the case of the INF Treaty, the United States and the Soviet Union. Although the Senate's understanding plays a critical role in what the United States agrees to in the treaty process, it certainly is not the domi-

nant factor to be considered in interpreting a treaty.

In this regard, the ABM reinterpretation condition turns the international law of treaty interpretation on its head, because the dominant consideration in interpreting an international treaty is what was agreed upon between the two nations—the intent of the parties. The committee report, however, reads:

In sum, although internal Executive memoranda and other negotiating materials may have been available to Members of the Senate, some of whom have sought to assure themselves that this "record" is consistent with the Administration's formal presentation, the clear corollary of the constitutional principles cited in the Biden Condition is that such documents need not have been examined for consistency and should not be deemed material to U.S. interpretation of the INF Treaty insofar as they are inconsistent with the Executive Branch's formal presentation of the INF Treaty. Report at 101 (emphasis added).

The committee's conclusion that such documents are not material flatly contradicts firmly established principles of treaty interpretation. The committee report notes that only the Senate's understanding matters, and does not mention the subsequent practices of the parties—thereby inferentially deeming them irrelevant as well.

The committee's attempt to exclude the negotiating record and the subsequent practices of the parties by placing sole reliance on what the committee defines as the Senate's understanding clearly revises treaty interpretation under international law, which recognizes that a treaty reflects the intent of the parties. The parties to the INF Treaty are the United States and the Soviet Union; the Senate is not, nor should be considered, an independent party. The committee report, however, requires a treaty to be in accordance with what the committee determines the Senate's understanding to be regarding that treaty.

By elevating the Senate's understanding of the agreements between the executive branch and the Senate, the ABM reinterpretation condition subordinates the agreements reached between the President and the other contracting country—the Soviets in the case of the INF Treaty—to the indicia of the Senate's intention.

The condition's effect of elevating the Senate's understanding of agreements reached between the President and the Senate may instill reluctance in other nations to negotiate treaties with the United States. Nations like the Soviet Union may be far less willing to enter into treaties with the United States if we claim that such treaties will be interpreted in light of the intentions of the U.S. Senate. The United States certainly would object—vociferously—if another country asserted a similar condition.

The ABM reinterpretation condition also has the effect of proposing a dramatic and one-sided change in the interpretation of international law, by urging that international agreements should be interpreted without regard to the intent of the parties, whenever that intent conflicts with the intent of the U.S. Senate.

Mr. President, to the contrary, the Supreme Court of the United States and established constitutional doctrine clearly recognize the following vital factors in treaty interpretation: the negotiations, the terms of the treaty, the negotiating record, and the practical construction adopted by the parties, also referred to as the "subsequent practice" of the parties.

The U.S. Supreme Court recently restated this fundamental tenet of treaty interpretation. In *Societe Nationale Industrielle Aero-*

spatiale v. U.S. District Court for the Southern District of Iowa, slip op. 85-1695 (1987), the Supreme Court stated:

In interpreting an international treaty, we are mindful that it is "in the nature of a contract between nations" . . . [and] The treaty's history, "the negotiations, and the practical construction adopted by the parties" may also be relevant. *Id.* at 10.

The Senate Foreign Relations Committee report on the INF Treaty is inconsistent with this firmly established principle. It is possible that the understanding between the Senate and the President may be at variance with what the United States agreed to with the other contracting country. In such cases, the Senate's understanding is an important, but not the determinative factor—or even the factor to be considered first.

In cases of ambiguity regarding interpretation of a treaty, the law is clear that the negotiating record and the subsequent practices of the parties are the critical factors in resolving the ambiguity. The Senate should reject contrary statements included in the committee report.

II. U.S. CONSTITUTIONAL LAW

The ABM reinterpretation condition changes and confuses U.S. constitutional law regarding the Senate's role in the treaty ratification process.

Mr. President, the law is well established that the executive interprets the meaning of a treaty. The "Restatement of the Foreign Relations Law of the United States," section 326, sets forth U.S. law on the authority to interpret international agreements:

(1) The President has authority to determine the interpretation of an international agreement to be asserted by the United States in its relations with other states.

(2) Courts in the United States have final authority to interpret an international agreement for purposes of applying it as law in the United States, but will give great weight to an interpretation made by the executive branch. "Restatement of the Law Third," American Institute (1987) at 202.

The "Restatement's" Comment elaborates on Presidential authority to interpret treaties:

The President has authority to interpret international agreements for the purpose of United States foreign relations since he is the country's "sole organ" in its international relations and is responsible for carrying out agreements with other nations. . . . The Senate, whose consent is necessary for the United States to conclude a treaty, has no special role in the implementation of the treaty after it is made, though, of course, it participates equally with the House of Representatives in enacting implementing legislation or appropriating funds. Interpretation by the Senate of a treaty after it has been concluded may have no special authority, but understandings expressed by the Senate in giving its advice and consent must be respected. *Id.*, comment a.

Professor Henkin, who is extensively relied upon by the Foreign Relations Committee, has posited a similar doctrine:

The obligation and authority to implement or enforce a treaty involve also the obligation and authority to interpret what the treaty requires. For international purposes, no doubt, the President determines the United States position as to the meaning of a treaty. Domestically, too, since the President has usually the principal, often the sole, responsibility to execute a treaty, the treaty means what he says it means. Henkin, "Foreign Affairs and the Constitution" 167 (1972).

The Supreme Court also addressed subsequent Senate interpretation of a treaty in *Fourteen Diamond Rings v. United States*, 183 U.S. 176 (1901). The Court considered the Senate's adoption of a resolution, subsequent to ratification of a peace treaty between the United States and Spain, which attempted to clarify the application of customs duties to the Philippines, and determined "that it is absolutely without legal significance on the treaty interpretation question before us." Id. at 180. The Supreme Court held:

The meaning of the treaty cannot be controlled by subsequent explanations of some of those who may have voted to ratify it. Id.

In a concurring opinion, Justice Brown stated that the Senate resolution "cannot be regarded as part of the treaty, since it received neither the approval of the President nor the consent of the other contracting power." Id. at 182. Justice Brown also discussed at length the treaty ratification process and the authority to interpret treaties:

A treaty . . . [i]n its essence is a contract. It differs from an ordinary contract only in being an agreement between independent states instead of private parties. . . . Obviously, the treaty must contain the whole contract between the parties, and the power of the Senate is limited to a ratification of such terms as have already been agreed upon between the President, acting for the United States, and the commissioners of the other contracting power. The Senate has no right to ratify the treaty and introduce new terms into it, which shall be obligatory upon the other power, although it may refuse its ratification, or make such ratification conditional upon the adoption of amendments to the treaty. Id. at 182-83.

Justice Brown concluded that the resolution at issue "can be considered only as expressing the individual views of the Senators voting upon it." Id. at 184.

Mr. President, the principles of treaty interpretation which apply in cases of ambiguity are similar to those used in determining the legislative intent of a statute. This standard was outlined by the Supreme Court in *Japan Whaling Association v. American Cetacean Society*, slip op. No. 85-954 (1986):

If a statute is silent or ambiguous with respect to the question at issue, our long-standing practice is to defer to the "executive department's construction of a statutory scheme it is entrusted to administer" [quoting *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. at 843] unless the legislative history of the enactment shows with sufficient clarity that the agency construction is contrary to the will of Congress. Id. at 11.

The Court continued:

It may be that the legislative history of these amendments [at issue] there are scattered statements hinting at the per se rules advocated by respondents, but read as a whole, we are quite unconvinced that this history clearly indicates, contrary to what we and the Secretary have concluded is a permissible reading of the statute. . . . Id. at 18.

In this case, the Supreme Court clearly indicated that it is the executive branch which interprets the statute, just as it is the executive branch which interprets a treaty.

The U.S. Supreme Court articulated the same doctrine in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). The Court stated:

When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress had directly spoken to the precise question at issue. If the intent of Congress

is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. Id. at 842-43 (emphasis added).

Mr. President, the committee report is inconsistent with U.S. constitutional law on the Senate's role in the treaty ratification process.

A. THE SOFAER DOCTRINE

The Committee report rejects the so-called Sofaer doctrine which articulates three criteria which must be met for the executive to be bound by the Senate's understanding of a treaty:

The particular interpretation must have been: first, "generally understood" by the Senate; second, "clearly intended" by the Senate; and third, "relied upon" by the Senate. Committee report at 90.

These criteria, however, are based on principles set forth in section 314 of the "Restatement of the Foreign Relations Law of the United States and on well-established constitutional doctrine.

During the March 22, 1988, hearing on the INF Treaty before the Senate Foreign Relations Committee, Senator NUNN himself agreed with those three criteria when he quoted with approval the following sentence from a March 17 letter from the President's Counsel, Mr. Culvahouse, to Senator LUGAR: "As a matter of domestic law, however, the President is bound by shared interpretations which were both authoritatively communicated to the Senate by the Executive and clearly intended, generally understood, and relied upon by the Senate in its advice and consent to ratification."

Senator NUNN stated: "That sentence there I agree with completely." Hearings at 144. Senator NUNN again quoted this sentence and the following sentence from the Culvahouse letter, id. at 153, and stated: "Now, I think those two sentences are something we can build on here." Id. at 154.

B. EXPLICIT/IMPLICIT CONDITIONS

Mr. President, the Senate traditionally performs its constitutional function by expressing any particular views of a treaty in the form of explicit conditions.

The committee report discusses at length how the Senate reaches its understanding, both explicit and implicit, of a treaty's meaning. The report noted that explicit understandings "are manifest in formal conditions to the Senate's consent. These conditions include amendments to the text of a treat as well as amendments to the resolution of ratification, such as 'reservations,' 'understandings,' and the like." Report at 93.

"Implicit understandings" are much more complicated. The committee report noted that "implicit understandings represent Senate agreement with and acceptance of the executive's explanations of the treaty." Id. at 93. The committee report refers to testimony by Professor Henkin to help define this concept: "Where several executive statements are made and there is general acceptance of their tenor, that is the Senate understanding." Id. at 93. The report continued:

Clearly, in determining whether the Senate consented to the ratification of a treaty pursuant to an implicit understand-

ing, a rule of reason must apply. Obviously, where the indicia of Senate intent or understanding (including unchallenged executive communications or explanations) are few or inconsistent, no implicit Senate intent can reasonably be said to exist. On the other hand, where the indicia of intent (again, including unchallenged executive communications or explanations) are several and largely consistent, an implicit intent can reasonably be concluded to exist. Id. at 93-94.

These statements are illustrative of repetitious ambiguity in the committee report; they also reflect that implicit understandings realistically have no meaning where there is "a factual claim of pervasive ambiguity"—see id. at 106.

Mr. President, the committee report seeks to elevate implicit understandings . . . to be equal in significance to explicit understandings. Id. Such a doctrine of implicit understandings is obviously tailored to buttress the narrow interpretation of the ABM Treaty. It acknowledges that there is no implicit understanding where the executive communications are few or inconsistent, id. at 94, and then refers to the ABM controversy as a factual claim of pervasive ambiguity. Id. at 106. As to the ABM Treaty, and treaty interpretation generally, such a doctrine of implicit understandings inevitably will raise complex—and probably insoluble—arguments about what is sufficient to imply an understanding. It is precisely for that reason that explicit understandings are formulated to remove such ambiguities and disagreements.

Had there been an explicit understanding of the scope of the ABM Treaty's application—narrow or broad—this issue would not now be before us. This Senator and many others have illustrated the lack of an explicit understanding in the ABM Treaty record—the text of the treaty, committee proceedings and floor debate. The ABM Treaty debate would not be a part of the INF Treaty debate today had there been an explicit understanding on narrow versus broad application of the ABM Treaty.

III. THE ABM TREATY

Mr. President, debate on the ABM reinterpretation condition necessarily will implicate the complex facts of the ABM Treaty and its interpretation.

While its proponents maintain otherwise, the condition necessarily rekindles—and, realistically viewed, seeks to resolve—the substance of the ABM Treaty reinterpretation debate. This is so because the Constitution obviously binds the President with respect to interpretation of all treaties and the condition purports to state principles of constitutional law. Its intent, quite clearly, is to bind the President generally, including his interpretation of the ABM Treaty. This is obvious from reading chapter IX on the condition, which refers repeatedly to the ABM controversy.

Mr. President, Chapter IX of the Senate Foreign Relations Committee report on the INF Treaty clearly is an attempt to discredit the so-called Sofaer doctrine and influence the argument on the narrow versus broad interpretation of the ABM Treaty. Apart from these two purposes, the committee acknowledges that this condition is unnecessary. The report reads:

The committee notes that, in one respect, its action in including this condition in the INF Treaty's resolution of ratification was unnecessary insofar as principles which inherently apply to the INF Treaty would apply even in the absence of any Senate action affirming them. Given the circumstances, however, the committee judged that to fail to affirm such principles could

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suggest some degree of acquiescence in the Sofaer doctrine, which the committee views as an executive attempt to assert an unconstitutional arrogation of the treaty power. In this sense the committee views the Biden condition, paradoxically, as both *unnecessary* and highly significant. Report at 97, emphasis added.

The committee report repeatedly raises the interpretation issue, only to discuss at length what the interpretation is not. The extended discussion in chapter IX of the so-called Sofaer doctrine clearly reflects the committee's attempt to interject the ABM Treaty debate into the INF Treaty ratification debate.

The ABM reinterpretation condition clearly implicates the ABM controversy when the ultimate question was asked of Senator CRANSTON on May 18:

Mr. SPECTER. When the distinguished Senator from California says that there is no objection to the current interpretation of the INF Treaty, only as to issues of reinterpretation, the sole issue in the Senate today is the interpretation of the INF Treaty, why bring up the question of reinterpretation of treaties? CONGRESSIONAL RECORD, May 18, 1988, at S8064.

Had Senator CRANSTON replied that there is no reason to bring up the question of reinterpretation of treaties, the debate on this condition would be over. However, Senator CRANSTON's answer brought up ABM and the Sofaer doctrine and that is where the extensive debate necessarily leads if the condition is pursued.

Mr. President, the debate over interpretation of the ABM Treaty highlights the importance of treaty interpretation principles. The ratification record of the ABM Treaty contains only a few statements on the issue of narrow versus broad, and these statements are themselves inconsistent. This Senator suggests that if a full debate of the ABM Treaty is pursued in the context of the INF Treaty ratification process, the record will reveal the degree of ambiguity on the narrow versus broad issue, which thus requires deference to the executive branch's interpretation given established principles of international law and U.S. constitutional law.

The only issue before the Senate today, however, is the interpretation of the INF Treaty, as to which there is no real dispute.

IV. CONCLUSION

Mr. President, inclusion of the ABM reinterpretation condition in the INF Treaty's resolution of ratification threatens to embroil the Senate in a protracted debate over the constitutional treaty power and continues to threaten ultimate ratification of this historic agreement. The concern I expressed on this floor on May 18—that the condition would be a detrimental factor in the ratification of the INF Treaty—unfortunately and regrettably still may prove accurate.

Ratification of the INF Treaty prior to the President's departure for the Moscow summit is too important to the Nation to be ensnared in a turf battle between a few individuals in the Senate and a few in the executive branch. The Senate should reject the ABM reinterpretation condition in the INF Treaty's resolution of ratification, and should continue to follow established principles of international law and U.S. constitutional law regarding treaty interpretation.

Mr. SPECTER. I thank the Chair, and I yield the floor. How many of my 45 minutes have I remaining?

The PRESIDING OFFICER. The Senator has 27 minutes remaining.

Mr. SPECTER. I thank the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. I would like to have yielded not more than 10 minutes.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I yield not to exceed 10 minutes to Mr. CRANSTON.

Mr. CRANSTON. I thank the majority leader.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. CRANSTON. Mr. President, I want to begin by making clear that the issue before us is one which we must confront by necessity, not by choice.

It is an institutional issue, which goes to the heart of the meaning of the long treaty ratification exercise in which we, as Members of the U.S. Senate, are engaged.

It is not—or at least it need not and should not be—a partisan issue.

The question, simply put, is:

How can we ensure that the Senate and the President share a common understanding of our obligations under the INF Treaty?

It is not an academic question. And it is not one devised as a means of introducing an element of complexity into our INF deliberations. Rather, it is a question thrust upon all Senators by the awkward efforts certain State Department lawyers have made to reinterpret U.S. obligations under a previous nuclear arms agreement, the 1972 ABM Treaty.

We are not trying to resolve that ABM dispute today. Indeed, as we in the Senate Foreign Relations Committee made crystal clear, the language on interpretation of the INF Treaty which was adopted by the committee is not dispositive of the "ABM reinterpretation issue"—nor, I should note, should the failure of Senators to address treaty interpretation principles during the 1972 ratification be deemed to prejudice subsequent debate and decisionmaking.

The ABM/SDI traditional interpretation versus broad interpretation debate has become charged with emotion—despite the fact that the funding issue has been, for all intents and purposes, resolved on Department of Defense authorization measures. We must set the ABM issue aside if we are to resolve the task before us—which is to vote on consenting to ratify the INF Treaty.

Having said what our amendment to the resolution of ratification does not do, let me briefly clarify what it does seek to accomplish.

Our amendment is an understanding which governs Senate consent to ratification. It is a "category one condition" which the President is obliged to accept as governing on his authority to exchange INF instruments of ratification with the Soviets.

It is treaty-specific. It applies only to this INF debate.

It stipulates that the U.S. Government shall interpret the treaty on the basis of the shared understanding of the Senate and the Executive at the time of ratification.

It defines this shared understanding in language that is essential and that is quite clear.

Our shared understanding is not limited to areas where the Senate has amended the resolution of ratification, or where it has extensively debated a specific provision on the Senate floor.

Our shared understanding is based primarily on a commonsense reading of the text and upon authoritative representations about this text provided to the Senate and its committees by administration officials during the ratification debate.

Adoption of this plain and simple language will liberate us from an exhaustive—and absurd—obligation to speak in the resolution of ratification to our understanding of every word of the treaty. It allows us to rely on the administration testimony without the cumbersome, time-consuming process of restating it.

I had honestly hoped that this simple language—which does not dispose of the past ABM dispute—could be adopted with the strong bipartisan support of Senators on both sides of the aisle.

I have worked closely with my friends DICK LUGAR, ALAN SIMPSON, HOWARD BAKER, and others, seeking, through hours of good-faith discussions, to devise a remedy which can invite consensus support, which avoids partisan divisions.

Regrettably, this has not proven possible. Although the latest version offered by the majority leader has seemingly served to end the opposition of some Senators on the minority side, a determined group of colleagues on the other side of the aisle have refused to agree on any language which effectively protects the role of the Senate in making a treaty.

Frankly, Mr. President, I simply cannot understand why some Republican Members object so strenuously to the committee resolution—the so-called Biden amendment.

Some of them have even actually threatened to vote against the treaty because of the resolution—a treaty the Republican administration negotiated, which President Reagan signed and which they themselves support.

Why?

Mr. SPECTER. Will the Senator yield?

Mr. CRANSTON. Certainly.

Mr. SPECTER. The Senator asked a question and I will give him an answer to the question. When you have a conclusion that the negotiating record is immaterial or conflicts with the understanding of the Senate, is that not consistent with decades, if not centuries, of international law on treaty interpretation?

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Mr. CRANSTON. Well, the negotiating record is not immaterial, but what is material to this is what we were told the treaty meant when the administration presented it to us.

What does the Biden amendment—stripped of its parliamentary language—

Mr. SPECTER. Will the Senator yield?

Mr. CRANSTON. No, I do not want to yield any further. We have limited time.

What does the Biden amendment—stripped of its parliamentary language—say that so arouses some Republican Senators?

It simply says that the treaty means what President Reagan, Secretary of State Shultz and other key administration officials said it means.

It says the treaty hides no secret meaning that the American people have not been told about.

And it says there is no valid basis for someone in the future to claim that it means something else, unless the Senate agrees to accept that new meaning.

What is so horrendous about such an amendment?

Why should it excite Republicans to such a fever pitch that they threaten to scuttle the treaty?

The Constitution specifically mandates that two units of the U.S. Government must participate in a treaty for that treaty to be legally binding; the Executive and the Senate.

But only the Executive negotiates treaties.

And only the Executive is privy to all the discussions that took place during the negotiations.

So the Senate must rely on the Executive as the only authoritative source for information on the treaty.

Why should Republicans object to including a simple statement that in effect says the Senate has been told the truth—the whole truth and nothing but the truth—about this treaty?

As I said at the beginning, Mr. President, I just cannot understand it.

I thank the many Senators, and administration officials, who have made constructive efforts to resolve this issue.

But now the time has come to vote, and shortly we will.

Before us is a proposal which I believe is fair, is balanced, and which meets all reasonable and legitimate concerns expressed by parties to this dispute.

I urge all Senators to support this language, and to thereby uphold the integrity of this Senate, and the meaning of the INF Treaty ratification process.

Mr. SPECTER. Will the Senator from California respond to a question on my time?

Mr. CRANSTON. Certainly.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from California has terminat-

ed his time. The Senator from Pennsylvania is recognized on his own time.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, when the Supreme Court of the United States said, in the 1942 session in the Choctaw Nation of Indians case that the negotiations were important for treaty interpretation and the U.S. Supreme Court restated that proposition on June 15, 1987, in the Societe case that the negotiations and the practical construction adopted by the parties may also be relevant, how can the Senator from California support a condition which says the negotiating record is immaterial?

Mr. SARBANES. Will the Senator yield?

Mr. SPECTER. No, I want an answer from the Senator from California, on my time.

Mr. CRANSTON. What was your question?

Mr. SPECTER. When the Supreme Court of the United States has repeatedly said—and I might throw in the restatement of the law on international relations—that the negotiating record is the most critical aspect of determining the meaning of the treaty, how can the Senator from California support a condition which says the negotiating record is immaterial?

Mr. CRANSTON. That is not basically what we have said. What we are trying to do is uphold the traditional approach.

Let me read to you from the committee report:

The traditional approach does not, of course, preclude reference to the "record" where such reference can be useful in explaining the effect of treaty provisions which may appear ambiguous or about which questions may arise. The Executive may sometimes wish to initiate such reference to the "record"; on some occasions the Senate may request a detailed account of the interchange which resulted in a particular treaty provision. But this case-by-case approach is far superior to a systematic submission of the "negotiating record," which implies either that treaties tend to be replete with ambiguity or that the Executive cannot be trusted to present an accurate account of the obligations to be assumed by the United States. Neither assumption should be allowed to govern the basic Executive-Senate interaction in the treaty-making process.

Mr. SPECTER. Mr. President, that is very interesting, but it has nothing to do with my question. My question related to ruling out the negotiating record when it was inconsistent with the understanding of the Senate.

Certainly, as the Senator from California reads, even under the report, the negotiating record comes into play in many circumstances, but that is not the issue.

The issue is that the Biden condition and the Byrd condition say that if the negotiating record is inconsistent with the Senate's understanding, whatever that may be, under an implicit understanding, the negotiating record is immaterial. That is what the committee report says at page 101.

When the Senator from California asked why Republican Senators object to this condition, that is why.

How much time do I have remaining, Mr. President?

Mr. CRANSTON addressed the Chair.

The PRESIDING OFFICER. Just a moment. Senators will suspend.

The Senator has 16 minutes remaining.

Mr. SPECTER. Sixteen minutes? Was 10 minutes consumed on the question and answer?

The PRESIDING OFFICER. Just a moment.

The Senator has 23 minutes remaining.

Mr. SPECTER. That is much better. I thank the Chair.

Mr. WILSON. Mr. President, will the Senator from California yield for a question on my time?

Mr. BYRD. Mr. President, I yield 5 minutes to Mr. Sarbanes.

The PRESIDING OFFICER. The Senator from Maryland is recognized for 5 minutes.

Mr. SARBANES. Mr. President, I thank the leader for yielding.

Before I make a brief statement, I want to comment with respect to the colloquy that was just taking place. Let me simply make the observation that, in most instances, in considering a treaty, what the Senate receives from the administration is the text of the treaty, and then the authoritative representations of the President and his representatives, who come to the Senate and say, "This is what the treaty means."

We then give our advice and consent. In most instances, we do not go to the negotiating record, and there is no reason to go to the negotiating record.

The Byrd amendment makes it very clear that those authoritative representations by the President and his representatives to the Senate and its committees, insofar as such representatives were directed to the meaning and the legal effect of the text of the treaty, are a basis of the common understanding of the treaty shared by the President and the Senate, and that later an administration cannot come along and adopt an interpretation of the treaty different from the common understanding based upon the authoritative representations made to the Senate at the time it was engaged in the advice and consent process.

Now, if, at the time of examining the treaty, the Senate finds ambiguities, or feels that the treaty is not clear, and probes as to what it means, it may well go into the negotiating record in order to help ascertain the meaning of a provision.

In the instance the negotiating record is relevant, and Senate reference to it is of course not precluded. That, in fact, happened in the case of this treaty.

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But in most treaties the Senate does not refer to the negotiating record. The negotiating record is not before the Senate. It is in the hands of the administration, so the Senate looks to the text of the treaty and the authoritative representations made by the President and his representatives as to the meaning of the treaty.

Once we give our advice and consent to the treaty on the basis of the common understanding, a subsequent administration cannot come along and reinterpret that treaty contrary to what was presented to the Senate at the time its advice and consent was obtained.

I want to commend the Majority Leader, the very distinguished Senator from West Virginia; Senator NUNN, Chairman of the Armed Service Committee; and our colleague from Delaware, Senator BIDEN, who unfortunately, cannot be with us today to participate in this debate but who, I know, very much would have wanted to be here; for their efforts in fashioning the provision that is now before us, and in ensuring thereby that the Senate's time-tested, time-honored, constitutional role with respect to treaty-making will be upheld in the course of considering the treaty that is now before us.

Mr. President, I want to take a moment or two to quote from some newspaper editorials and to have them printed in the RECORD.

There are some who have asserted that this is not an issue of importance. I absolutely agree with the majority leader when he said in his opening statement that this is a matter of great consequence, and that what is at issue is the rightful and constitutional role of the Senate in the approval of treaties.

The Baltimore Sun stated, in an editorial of the 16th of May:

An no point, however, should the Senate withdraw from its insistence that treaty testimony offered by an incumbent administration is binding on future administrations.

If logic prevailed, any administration would want its treaty interpretations to have the force of law on its successors. But the Reagan White House has gotten itself into the crazy position of arguing that its own INF testimony is only transitory and less than authoritative.

I will ask that the full text of that editorial be included in the RECORD, along with one of April 29, and another one from the Sun of April 18.

I quote from the latter editorial of April 18, in the Baltimore Sun, entitled: "The Word of the United States." That editorial leads off as follows:

Was Reagan administration testimony on the INF treaty banning intermediate-range nuclear forces "authoritative" and binding on future administrations? Curiously enough, Reagan officials find themselves arguing vociferously that it was not—that Senate efforts to give their interpretations permanence amounts to a legislative assault on executive prerogatives.

This is a serious constitutional question despite its Alice in Wonderland qualities. It

is the major roadblock to Senate ratification of a pact that on its own merits has wide bipartisan support.

Later it goes on to state, and I quote:

Leading the opposition to the White House view that treaties mean only what governments of the moment say they mean is Sen. Sam Nunn, D-Ga. His extensive comments have brought two profound matters to the fore—one dealing with credibility, the other dealing with the division of powers between the Senate and the executive.

We believe an administration that negotiates a treaty should offer testimony that the Senate can rely upon in giving its assent to ratification.

Further on, the editorial states:

As much as this newspaper would welcome INF treaty ratification and the arms control agreements it might generate, we would urge the Senate to oppose the cavalier White House view on treaty interpretation. The Reagan approach is not conservative; it is radical.

The PRESIDING OFFICER (Mr. DIXON). I regret to advise the Senator his time has expired.

Mr. SARBANES. Would the Senator yield me an additional 3 minutes?

Mr. BYRD. I yield the Senator 3 minutes.

Mr. SARBANES. In the same vein, Mr. President, the New York Times in an editorial on May 25, said in speaking of the President: "If only he would now agree to a simple, honorable proposition—that the administration means what it says to the Senate—the treaty will be his."

The editorial goes on to note:

The need for such explicit reassurance was shown anew in a little-noticed Federal court case decided last week that demonstrated the Administration's determination to revise treaties as it wishes. In this case, it tried to reinterpret an obscure treaty concerning Iceland; Judge Harold Greene told a Justice Department attorney, "You are taking the same position that the State Department is taking on the [Euromissile] treaty that whatever is said to the Senate doesn't mean anything."

The Judge held that reinterpretations may not violate the "solemn representations" made to the Senate.

And it concludes with the following paragraph:

Mr. Reagan can win rousing Senate backing for this sound treaty, and add the final seal of approval in Moscow, just as he hopes. He need only agree that when his Administration tells the Senate what the treaty means, it means what it says.

I will ask that New York Times editorials of February 9 and May 17 also be included in the RECORD, as well as one of May 5, in which the Times notes, and I quote:

The serious obstacle to ratification, however, is the so-called Sofaer Doctrine. Named for Abraham Sofaer, the State Department's legal adviser, it holds that official testimony on the meaning of a treaty is binding only if it is "generally understood, clearly intended, and relied upon" by the Senate. Since it's hard to know what this mumbo-jumbo means, Presidents would be free to do with treaties as they wish.

The Senate Foreign Relations Committee hopes to solve the problem, simply and sensibly, by making executive branch testimony binding.

In fact, what the Byrd amendment seeks to do is to make it clear that the text of the treaty, the provisions of the resolution of ratification, and the authoritative representations which were provided by the President and his representative to the Senate and its committees, in seeking Senate consent to ratification go to constitute the common understanding.

Mr. President, the Washington Post has also editorialized to the same effect as the Baltimore Sun and the New York Times. Let me quote from an editorial of May 20 about the importance of this issue. It alludes to the fact that some may seek to depict this issue as a rather arcane point of institutional privilege. The Post says, and I quote:

But it's not an arcane point. It's common sense. The Senate is not above being picky and precious, but here it is insisting on a procedure that merely reaffirms good faith. With or without a summit, the Senate's position deserves to be upheld.

I will ask unanimous consent that two other editorials of April 1 and February 9 from the Post on this subject also be included in the RECORD. In the one of February 9, the Post says and I quote:

Hardball? Yes. A small point of Senate privilege? No, a large point: the Senate cannot possibly be asked to approve a treaty when the administration reserves a right to say later that it means something other than what the executive branch asserted at the time.

The PRESIDING OFFICER. I regret to advise the Senator all his time has been consumed.

Mr. BYRD. Does the Senator need 1 more minute?

Mr. SARBANES. I would appreciate an additional minute.

Mr. BYRD. I yield 1 more minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. Let me emphasize that editorial comment: "the Senate cannot possibly be asked to approve a treaty when the administration reserves a right to say later that it means something other than what the executive branch asserted at the time"—at the time that it was seeking the advice and consent of the Senate to the treaty. No treaty can come into force until the Senate advises and consents to its ratification. And in the course of that process, we receive from the administration authoritative representations as to the meaning of the treaty.

I am not talking about situations of ambiguity or instances in which the meaning of a particular provision was not addressed, where perhaps the Executive made no representation.

In those instances in which the administration has made authoritative representations to the Senate, where they are clear about the meaning of the treaty, they cannot later, after advice and consent has been obtained, reinterpret those provisions. Stop and think about it for just a moment.

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If such reinterpretations are allowed, then the Senate's role has become a nullity. An administration can come in and tell the Senate anything it wants to tell it in order to get advice and consent, and later, turn and say: "Well, that provision does not mean what we represented that provision to mean at the time that we were seeking your advice and consent."

What does that do to the role of the Senate? I submit to you, it destroys our role, and I strongly commend the majority leader for insisting on sustaining our constitutional system with respect to the treaty-making power and the role of the Senate in that regard.

Mr. President, I now ask unanimous consent that all of the articles, excerpts of which I read into the RECORD, be printed in full at this point in the RECORD.

I thank the majority leader and I yield the floor.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Baltimore (MD) Sun, May 16, 1988]

SENATE TREATY POWERS

Having cleared away obstacles to the INF treaty in negotiations with the Soviet Union, the Reagan administration now faces even tougher bargaining with the United States Senate. Tougher because this time the obstacles are of its own making, not of its adversary. Tougher, because the last-minute glitches with the Russians pushed back Senate debate a week, leaving only a few days for ratification of the pact eliminating intermediate-range nuclear forces before the Moscow summit.

The administration deserves to lose this face-off with the Senate for two key reasons: First, its attempt to reinterpret the 1972 Anti-Ballistic Missile treaty in order to promote the Strategic Defense Initiative is so obviously contrary to law and custom that it cannot bear close scrutiny. Second, the Senate's need to reassert its constitutional treaty powers so obviously outweighs President Reagan's desire for a pro forma diplomatic ceremony with Soviet General Secretary Mikhail S. Gorbachev that the White House is bound to blink.

Humiliation of the president is hardly a wise gesture before the summit. Therefore, American citizens have a right to expect the executive and legislative branches to work out some face-saving language to cover an administration retreat on the ABM issue. At no point, however, should the Senate withdraw from its insistence that treaty testimony offered by an incumbent administration is binding on future administrations.

If logic prevailed, any administration would want its treaty interpretations to have the force of law on its successors. But the Reagan White House has gotten itself into the crazy position of arguing that its own INF testimony is only transitory and less than authoritative. It also wants the INF treaty to ban forever the very kind of futuristic technologies (lasers and particle beams) that it wants excluded from ABM coverage.

The Senate's seriousness about its treaty powers was a factor in the administration's successful bid to stop the Kremlin from fudging on the INF pact. After the treaty was signed Dec. 6, U.S. negotiators discovered the Russians wanted to bar verification teams from looking into containers holding only stages or parts of intermediate missiles;

to limit inspection rights within missile test sites or launching sites, and to restrict the use of cameras and other monitoring equipment. Both the White House and the Senate agreed this was a serious attack on intrusive verification provisions that could set a pattern for more complicated pacts dealing with strategic weapons.

Moscow's readiness to accede to American demands on verification is a sign that Mr. Gorbachev wants an INF treaty as much as Mr. Reagan. So Senate leverage could be strong enough to pry both summit leaders from obstructive positions. It is leverage that should be used wisely and resolutely, but not to excess.

[From the Baltimore (MD) Sun, Apr. 29, 1988]

CAUGHT IN ITS OWN ILLOGIC

The Reagan administration keeps tripping over its own feet in its race to obtain ratification of the treaty banning intermediate-range nuclear forces before the next Reagan-Gorbachev summit. Its latest pratfall has arisen from its admitted failure to negotiate clear provisions on just what kind of land-based missiles would be forbidden by the INF pact. There is no argument that the treaty would eliminate missiles armed with warheads, either nuclear or conventional. But what about futuristic missiles, such as those equipped with lasers or microwave pulse generators? And what about surveillance, radar-jamming and other types of unarmed drones and remotely piloted vehicles?

Sen. Sam Nunn, D-Ga., chairman of the Senate Armed Services Committee, has extracted the astounding confession from the administration that the latter two categories of missiles were not even mentioned in the long negotiations on the INF treaty. His objections have extracted some clarifications from the Russians. But so far enough ambiguities remain to justify Senate demands for more explicit assurances from the Kremlin, even if this complicates preparations for the summit.

It is ironic that the same administration that has been arguing for a "broad" interpretation of the 1972 Anti-Ballistic Missile (ABM) treaty so it could deploy futuristic strategic defense systems is now pushing for an treaty that supposedly would bar futuristic medium-range systems. It is even more ironic that to protect its tortured illogic in the ABM case it holds that its own definitions of the INF treaty are subject to reinterpretation by future administrations. No wonder the Senate feels a need to negotiate a pact with its own government before it agrees to ratification of the Reagan-Gorbachev treaty.

Former President Richard Nixon has categorically rejected the Reagan administration approach. In an exchange with the American Society of Newspaper Editors earlier this month, he said he had never anticipated that a succeeding administration would try to reinterpret testimony offered on the treaty by his own officials. He said Senator Nunn is "absolutely correct" in his constitutional argument that "what a treaty means is what and how it was presented to the Senate." Rather than try to reinterpret the treaty and risk senatorial ire, Mr. Nixon said the Reagan administration should either have gotten the Kremlin to accept its views or should have abrogated the treaty.

Although this newspaper has consistently supported research on strategic defense, we believe the United States is ill-served by the sophistry and contradiction built into the Reagan administration's legal and diplomatic positions. It is better to get these matters straightened out right now so that the

credibility of future U.S. administrations is not compromised by the Reagan administration's lack thereof.

[From the Baltimore (MD) Sun, Apr. 18, 1988]

THE WORD OF THE UNITED STATES

Was Reagan administration testimony on the INF treaty banning intermediate-range nuclear forces "authoritative" and binding on future administrations? Curiously enough, Reagan officials find themselves arguing vociferously that it was not—that Senate efforts to give their interpretations permanence amounts to a legislative assault on executive prerogatives.

This is a serious constitutional question despite its Alice in Wonderland qualities. It is the major roadblock to Senate ratification of a pact that on its own merits has wide bipartisan support.

What brought this issue to the fore is a persistent Reagan effort to discard Nixon administration testimony on the 1972 Anti-Ballistic Missile Treaty and to offer a broader interpretation that would permit space-based testing of the Strategic Defense Initiative. Last year Congress turned to its power of the purse to cut off funds for tests that Nixon testimony would bar. But Reagan officials have returned to the fray, even if it means putting the INF treaty and the coming summit at risk.

Leading the opposition to the White House view that treaties mean only what governments of the moment say they mean is Sen. Sam Nunn, D-Ga. His extensive comments have brought two profound matters to the fore—one dealing with credibility, the other dealing with the division of powers between the Senate and the executive.

We believe an administration that negotiates a treaty should offer testimony that the Senate can rely upon in giving its assent to ratification. Otherwise, there is no reason why the Senate, or foreign powers, should rely on the word of the United States government or, indeed, why other governments should not reinterpret pacts willy-nilly. Treaties as such would be rendered unreliable: international law would become more of a jungle.

On the division of powers, the assumption that each administration can reinterpret treaties at will is not only outrageous but unworkable. Thousands of pacts with foreign countries are as much part of the law of the land as domestic statutes. Chaos would be the product of a doctrine that renders legislative history meaningless.

As much as this newspaper would welcome INF treaty ratification and the arms control agreements it might generate, we would urge the Senate to oppose the cavalier White House view on treaty interpretation. The Reagan approach is not conservative; it is radical. It is not principled; it is a tortured exercise to justify strategic defense tests clearly banned by the 1972 ABM treaty.

The Senate Foreign Relations Committee has approved a reservation to the INF treaty that says the United States will interpret the treaty "in accordance with the understanding . . . shared by the executive and the Senate at the time of Senate consent to ratification." This is not a "killer amendment." If the Reagan administration wishes to make it so, it will have to accept responsibility for delaying INF treaty ratification.

[From the New York Times, May 25, 1988]

THE TREATY AND ITS ENEMIES

For a while, it looked as though several willful men could derail the Euromissile treaty and President Reagan's wish to make

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the treaty a centerpiece of his summit meeting in Moscow next week. Two of them are Jesse Helms and Gordon Humphrey, Republican Senators who have been trying to obstruct ratification with one niggling amendment after another.

Their obstructionism now seems to have been swept away, leaving just one willful man blocking fulfillment of President Reagan's wish: President Reagan.

If only he would now agree to a simple, honorable proposition—that the Administration means what it says to the Senate—the treaty will be his.

This final obstacle arises from the Administration's devotion to Star Wars. Wanting to conduct tests prohibited by the Antiballistic Missile Treaty when it was presented to the Senate under President Nixon, the Reagan Administration hit on a novel idea: reinterpret the treaty. The State Department's legal adviser, Abraham Sofaer, obliged with an opinion saying that what an Administration tells the Senate about a treaty's meaning is not necessarily binding.

This expedient assault on the Senate's treaty responsibilities understandably offended the Foreign Relations Committee. It approved this treaty to eliminate Soviet and U.S. missiles with ranges of 300 to 3,400 miles and attached only one condition: Testimony to the Senate on the treaty's meaning indeed binding.

The need for such explicit reassurance was shown anew in a little-noticed Federal court case decided last week that demonstrated the Administration's determination to revise treaties as it wishes. In this case, it tried to reinterpret an obscure treaty concerning Iceland; Judge Harold Greene told a Justice Department attorney, "You are taking the same position that the State Department is taking on the [Euromissile] treaty, that whatever is said to the Senate doesn't mean any thing." The judge held that reinterpretations may not violate "the solemn representations" made to the Senate.

Unless the Administration is willing to reassess the Senate as to the integrity of its role in treaty making, the ratification Mr. Reagan seeks is unlikely. But once reassurance is given, ratification will follow swiftly and overwhelmingly.

The United States has not ratified an arms control treaty for 16 years. This treaty richly warrants ratification. It requires the Soviet Union to destroy missiles that can carry four times as many nuclear warheads as the missile to be destroyed by the U.S. It is the most thoroughly examined, exhaustive detailed arms control pact in history.

Mr. Reagan can win rousing Senate backing for this sound treaty, and add the final seal of approval in Moscow, just as he hopes. He need only agree that when his Administration tells the Senate what the treaty means, it means what it says.

[From the New York Times, May 17, 1988]
VERIFY, CLARIFY, RATIFY

The Senate rightly held back on ratifying the treaty on medium-range missiles in Europe when Soviet-U.S. verification differences sprang up. Now Secretary of State Shultz is back from Geneva with the differences resolved.

If the Senate now moves promptly, it could ratify the treaty in time for the President's trip to Moscow late this month. If not, the necessary spur of the summit deadline will be lost, risking the loss of the treaty's benefits, specific and on Soviet-U.S. relations in general.

The Senate Foreign Relations Committee six weeks ago approved the treaty, which would eliminate all Soviet and U.S. missiles

with ranges between 300 and 3,400 miles. Then prospective inspection teams from the two countries began to discuss how the treaty's many verification provisions would be implemented. Disagreements appeared, then grew, and finally Mr. Shultz and the Soviet Foreign Minister, Eduard Shevardnadze, had to take them up last week in Geneva.

The actual details were minor. They were important because the Russians seemed to be backsliding. Mr. Shultz's report yesterday was thus heartening: The Russians largely assented to what the U.S. held to be the original terms. The treaty will not cover West German-owned missiles. U.S. readings prevailed on the size of containers open to inspection, the right to inspect any buildings within monitoring sites and the unrestricted use of cameras.

Growing stability in U.S.-Soviet relations made this resolution easier. A successfully concluded treaty will contribute to this stability, moving away from unthinking hostility and a wasteful arms race. But if the Senate should now fail to ratify, America will squander a precious chance to cement a bipartisan domestic consensus for arms control.

Besides this benefit to better relations, the treaty will require the Russians to destroy missiles than can carry four times as many nuclear warheads as the missiles the U.S. would destroy. And its verification provisions the most extensive ever, set a valuable precedent.

These benefits have won the treaty solid bipartisan backing in the Senate. Prospects for a smooth ratification are good, but for one issue. Many senators are understandably reluctant to ratify a treaty presented by this Administration because it claims the right to reinterpret treaties unilaterally. The Administration has made that claim in reckless pursuit of its Star Wars dream.

The one condition attached by the Senate Foreign Relations Committee is that testimony to the Senate on the treaty's meaning is binding. To win ratification President Reagan will need to swallow hard and accept this clarification.

Ratification is all the more important because the U.S. and Soviet Union have scaled back what they hope to achieve by the summit meeting in the way of strategic arms reductions. President Reagan needs to take this treaty to Moscow as a small but solid gain for national security, arms control and saner international relations.

[From the New York Times, May 5, 1988]
THE DOCTRINE OR THE TREATY?

The Reagan Administration negotiated an important treaty with the Soviet Union that would eliminate Euromissiles. Now it jeopardizes that accomplishment by insisting on a novel and absurd Presidential doctrine that few senators will or should swallow.

The Administration created the problem by asserting the right to reinterpret treaties unilaterally, and then doing just that with the Antiballistic Missile Treaty to suit President Reagan's Star Wars programs. The Senate Foreign Relations Committee rightly responded by attaching a condition to the new Euromissile treaty: Neither Mr. Reagan nor future Presidents would be permitted to disregard understandings of a treaty's meaning at the time of ratification.

If President Reagan wishes to see his new Euromissile treaty ratified, he will have to accept the committee's assertion of good sense and sound constitutional procedure.

The treaty comes to the Senate floor this week, in plenty of time to debate, approve and send it with President Reagan to Moscow on May 29. Three last-minute

glitches have sprung up, none likely to block ratification.

Senate leaders vow to work furiously with the Administration on these three problems before floor debate begins. The Russians have been edging off commitments on on-site inspections; the Administration is confident Moscow will reaffirm earlier understandings. The treaty ignored futuristic technologies; now language is being worked out. There are concerns about U.S. long-range monitoring capability; the Senate and the White House will have to provide for this.

The serious obstacle to ratification, however, is the so-called Sofaer Doctrine. Named for Abraham Sofaer, the State Department's legal adviser, it holds that official testimony on the meaning of a treaty is binding only if it is "generally understood, clearly intended, and relied upon" by the Senate. Since it's hard to know what this mumbo-jumbo means, Presidents would be free to do with treaties as they wish.

The Senate Foreign Relations Committee hopes to solve the problem, simply and sensibly, by making executive branch testimony binding. Yet the Administration has persuaded some loyalist senators to oppose it, a move that could well sink the treaty.

If the Senate does not approve the treaty before the Reagan-Gorbachev summit meeting, it's likely not to happen under President Reagan—and then perhaps never. Presidential campaigns and the first year of a new Administration are not conducive to ratifying arms agreements. The choice of doctrine or treaty rests with the White House.

[From the Washington Post, May 20, 1988]

INF: THE COUNTDOWN

The mischief wrought by the Reagan administration's ardor for its vision of nuclear defense in space continues to dog consummation of its most important diplomatic success, the INF Treaty. To make possible "Star Wars" tests more advanced than the political consensus would support, the administration discovered some previously undetected wiggle room in 1972 ABM Treaty—it became known as the Sofaer Doctrine, after State Department lawyer Abraham Sofaer. Congress found ways to block the Star Wars tests, but the administration's claim of a basis on which the executive can reinterpret a treaty on its own has carried over into Senate consideration of the Intermediate-Range Nuclear Forces Treaty.

A few respected Republicans who support the treaty have signed on in defense of the president's refusal to weaken his grip on the Sofaer Doctrine, and that makes what otherwise might be an open-and-shut case a bit less so. But the Senate Democrats seem to us to have much the better of the argument all the same. They are asking simply that the executive not to be permitted to walk away from the shared interpretation of a treaty reached by the executive and the Senate at the time of ratification; no later unilateral rereadings. They are saying that it cannot be, as the administration holds, that some things the executive tells the Senate during a ratification debate are binding and other things are not.

A kind of political "chicken" is being played here. The treaty itself is assured of approval. Everyone can see how eager the president is to carry it, ratified, to the Moscow summit, which opens in barely a week, and almost everyone agrees it would be a good thing, though not an absolute necessity, for the treaty to be wrapped up by then. There is a general appreciation that the Soviets did their part by answering

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promptly and constructively the Senate's last-minute queries on verification.

The calculation in the the Senate seems to be that a president with his eye on history will swallow the "Biden condition" rather than go to Moscow with no treaty. The calculation in the White House seems to be that the Senate will not want to expose itself to an election-year charge of undercutting the president for what can be depicted as a rather arcane point of institutional privilege. But it's not an arcane point. It's common sense. The Senate is not above being picky and precious, but here it is insisting on a procedure that merely reaffirms good faith. With or without a summit, the Senate's position deserves to be upheld.

[From the New York Times, Feb. 9, 1988]

SOUND WAY OUT OF THE TREATY TRAP

Dumb. Deceitful. Self-defeating. The Reagan Administration set senators to sputtering when it offered up a new doctrine on treaties: Administration testimony during hearings on treaty approval need not be binding on Presidents. That doctrine, intended to protect President Reagan's Star Wars dream, prompted senatorial fury over legal treachery. Now the anger returns to haunt—perhaps even hinder—approval of the Administration's Euro-missile treaty.

Senators eager to clarify and avenge may hold the new treaty hostage until the Administration agrees to clever language to circumvent the legal problem. They would do well to stop before they compound the confusion and jeopardize the treaty. There's a simpler remedy.

The intricate constitutional, institutional and legal tale deserves to be savored and dissected. It began in 1983 when Mr. Reagan announced his goal of creating space-based defense. The Administration was informed that the scheme ran counter to the Antiballistic Missile Treaty of 1972, which restricts testing to fixed land-based sites. At least that's what the Senate was told during ratification hearings by the Nixon Administration.

The Reagan Administration found this interpretation unacceptable and discovered a loophole. A careful study of the full record, it claimed, showed that the Soviet Union and the U.S. never agreed to restrict the testing of exotic technologies. No matter that officials had testified otherwise to the Senate and that Moscow and Washington had abided by the original interpretation.

Many senators protested. The White House, however, stood its shaky ground, creating an impasse. Everyone knew the issue would be tested with the Euromissile treaty.

The hearings on this treaty proceeded smoothly for two weeks. Enter Senators Robert Byrd and Sam Nunn. They did not insist on forcing the Administration to back down on the general legal principle and abandon Star Wars. They wanted a compromise: Let Secretary of State Shultz agree in a letter that in the case of Euromissiles, the Administration's testimony on the meaning of the treaty is consistent with the final terms of the accord and will be considered "authoritative and binding."

Under pressure from conservatives, the Administration decided to say yes to "authoritative" but not to "binding." Binding, it was reckoned, would be too prejudicial to the Star Wars stance.

Thus a standoff, and luckily so for the Senate. The Nunn-Byrd compromise was flawed. It would have given too much away on the legal principle. Administration officials could say they negotiated a deal on Euromissiles without having to back down on the ABM treaty. Nor would a letter from the Secretary of State be legally binding.

Now, enter Senator Joseph Biden with a remedy. He would sidestep negotiations with the Administration. Why weaken the Senate's constitutional and institutional position by bargaining, and hold up the treaty as well? Instead, he would ask the Senate by majority vote to attach to the treaty a statement. It would declare that the Administration's testimony is authoritative and binding and in accord with the understanding of the treaty as shared by the Senate and the executive branch at ratification.

Such an attachment makes sense. It would not wholly clarify the general legal dispute, but by passing it, senators would reaffirm their constitutional responsibilities. It would be binding, yet would not require renegotiation with Moscow. And it would not delay ratification of the sound and popular Euromissile treaty.

[From the Washington Post, Feb. 9, 1988]

HOW TO KILL THE INF TREATY

Think hard, now. What is the most efficient and certain way the Reagan administration might ensure the collapse of its No. 1 foreign policy project, securing Senate approval for ratification of the INF Treaty? This problem may already have been solved. The administration, by prolonging its dispute with Sens. Nunn and Byrd, may be doing everything necessary to derail the treaty and consummate a political, diplomatic and strategic disaster.

The trouble arises from the course President Reagan has chosen on his Strategic Defense Initiative. When he wanted to open the door to ambitious testing of this space-based missile defense system, he found that the Anti-Ballistic Missile Treaty of 1972 barred the way. The lawyers, however, came up with something: the notion that although the way was barred by what the executive branch had told the Senate the treaty meant at the time, the way was actually opened by what the treaty's secret negotiating record revealed.

Right at that point, a flag should have gone up over at the State Department. Somebody should have said: Wait a minute. What about the next time? Suppose the Senate asks how it can believe what we're saying about the next treaty? Instead, State Department legal adviser Abraham Sofaer said . . . Well, what he said is what has Sam Nunn and Robert Byrd insisting that if the administration is not prepared to vouch for its own testimony before the Senate, then the Senate is going to have to examine the (30-volume) negotiating record "exhaustively" and meanwhile put the INF Treaty on hold. Secretary of State George Shultz appeared ready at one point to accommodate to the Senate position but then, it's reported, backed off.

Hardball? Yes. A small point of Senate privilege? No, a large point: the Senate cannot possibly be asked to approve a treaty when the administration reserves a right to say later that it means something other than what the executive branch asserted at the time. A point on which the public (and perhaps other senators) will not support the insisting senators? An administration with the ambitious foreign policy agenda of this one would have to be very careless to make a full-scale test. A point important in order to preserve a broad SDI testing option? If that's so, it's better to suspend the INF debate right now and sort out the cluttered SDI issue before the president goes any farther down the diplomatic path.

[From the Washington Post, Apr. 1, 1988]

FORWARD WITH THE INF TREATY

The Senate Foreign Relations Committee has sent President Reagan's first arms con-

trol treaty to the Senate floor by a vote of 17 to 2. It was the expected result, and the right one. In several months of hearings on the INF treaty, which Mr. Reagan and Mr. Gorbachev signed last December, substantive objections were considered and found to be unpersuasive. Not that this treaty eliminating all of the two powers' intermediate-range missiles gained in stature. On the contrary, a consensus deepened that the treaty is a politically pioneering but strategically limited measure whose chief significance is to propel its signers on to larger tasks in reducing conventional, chemical and strategic arms. Still the treaty itself, as a contract standing on its own, has held up.

A cloud nevertheless hangs over the prospect of certain and prompt Senate ratification. It arises from the clash over treaty interpretation that a blindered administration carelessly precipitated three years ago when it announced that the ABM Treaty of 1972 meant something other than what successive administrations had said all along. Mr. Reagan intended to clear a legal path for otherwise prohibited tests of his proposed strategic defense system, SDI. But the Senate, looking at SDI but beyond SDI, saw a challenge to its institutional powers. A fight over which branch has the last word on interpreting a treaty is now going to be carried to the floor, and the INF treaty is hostage to it. The lawyers and the constitutional scholars have learned things to say, but the real burden of an expeditious resolution rests with the president, who started this distracting and unnecessary fight in the first place.

Treaty debates seem always to be about something other than the text on the table. This has produced some questionable results in the past, but our impression is that this time around the results are good. The American political system was shocked by the Reagan-Gorbachev treaty and needed an interlude to consider not simply the strategic implications but the whole idea of dealing again with the Kremlin—something that had seemed remote when Ronald Reagan came to power. Coincidentally but usefully, the debate overlaps the American political campaign. The upshot of the whole passage, we think, is that people understand better the promise and the complexities of moving forward, carefully with the Kremlin. It may also be worth noting that denunciations of the prospective INF treaty by most of the Republican candidates in the face of George Bush's strong support of it didn't seem to do them a lot of good.

The PRESIDING OFFICER. Who yields time?

Mr. WILSON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Mr. President, I yield 5 minutes to the Senator from Indiana.

The PRESIDING OFFICER. The Senator from Indiana is recognized for 5 minutes.

Mr. QUAYLE. Mr. President, I think what we, unfortunately, have before this Senate today, is in my judgment, a constitutional power play. We have a situation where an administration is slowly fading into history and a Senate that now sees an opportunity to reinterpret the Constitution; reinterpret what the Supreme Court says; reinterpret what international law calls for and to do something that I think is not only totally unnecessary,

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but will ultimately cause more problems in the future.

This all stems from the ABM debate, no matter whether everybody stands up here and says, "Oh, this isn't related to the ABM debate." Everybody knows it is related to the ABM debate. The Senator from South Carolina is going to get into that later on.

They keep talking about reinterpretation. In the ABM debate, there was not any reinterpretation. It was never discussed, except in passing reference. I think one Senator talked on the floor of the Senate about it.

Reinterpretation? It was never interpreted, but here the Senate today is going to do plenty of reinterpretation on the Byrd amendment, the Biden amendment. We are going to reinterpret our Constitution, what our courts say it means and the principles of international law.

I submit that it is fundamentally wrong for three reasons: One, it is contrary to international law. Second, it is contrary to our Constitution. Third, it will create more problems than it solves.

International law says that to determine a treaty's meaning we consult the treaty first; we look then at the negotiating record and at subsequent practice. This amendment, basically, says, "Don't worry about the negotiating record after ratification. The negotiating record is not that relevant." The negotiating record is relevant. You have to go into the negotiating record to find out, as a matter of fact, that what the people told you happened really happened, and how it happened. Yet, the negotiating record has been very important on a number of things.

This amendment is contrary to the principles international law. It is contrary to our law. The Constitution gives the President of the United States the power to interpret treaties and to implement treaties. Nowhere does it say in the Constitution that the Senate has the constitutional responsibility to execute or interpret treaties after they are ratified. Interpretation is done by the executive branch. Passing this amendment is reinterpreting this point, it overturns it.

Finally, Mr. President, this amendment is going to create more problems than it solves.

I find it very interesting that this amendment talks about the definition of "commonly understood." What is "commonly understood"? During the hearings, we were told that the definition of a weapon was commonly understood; that everyone commonly understood what the definition of a weapon is. The definition of a weapon was something that was designed to damage or destroy its target. Commonly understood: The Senate was given this definition repeatedly in authoritative testimony.

But the testimony turned out to be a bunch of nonsense. The definition was not commonly understood. As we es-

tablished on the floor here this morning in debate, the definition was made up by our negotiators alone after the treaty was signed. Yet we were told by authoritative sources that it was commonly understood. The Senate luckily did not accept that. The Armed Services Committee did not accept it, and the other committees did not accept it.

We said we did not believe that was what was commonly understood, and we made our negotiators go back and go through a lot of new negotiations with the diplomatic notes of exchange to get the Soviet Union pinned down on what was "commonly understood" by "weapons delivery vehicle."

But this amendment says: The United States shall interpret this treaty in accordance with the shared understanding of the Senate and executive as reflected by the executive's authoritative testimony on the treaty before the Senate.

Well, we were told what was commonly understood, and we found out it really was not commonly understood. We had dissension in the administration on what was commonly understood. We had dissension in the committees on what was commonly understood, but we were told that. You can see where we would be with this kind of an amendment on this treaty in the future. As I said, luckily, we cleared this one up. What about the problems we didn't clear up or even discuss? Will they be commonly understood? I doubt it.

I say that what is commonly understood is that this is a rehash of the ABM debate. What is commonly understood is that we are simply reinterpreting our constitution and the principles of international law.

This is a constitutional power grab, and what is of interest is that this amendment, which will only be binding on our officials, not the Soviets, will become binding domestic law by a majority vote of just the Senate. It will not be a majority vote of both Houses as the Constitution requires, but only a majority vote of the Senate.

The only thing I commonly understand about this amendment is that it is contrary to international law, to our Constitution, and it is unnecessary.

Mr. President, I hope it is rejected.

The PRESIDING OFFICER. Who yields time?

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Mr. President, I find myself in the interesting and entertaining position of mediating between Democratic friends and colleagues. I was going to suggest, partly by way of response to my colleague from California, that this is not a purely partisan matter. The unhappiness with this resolution is shared by Democratic Members as well. Apparently, he was under the mistaken belief that it is purely a Republican concern, and it is not.

The majority leader, in his request for unanimous consent, sought and obtained consent that the Senator from South Carolina [Mr. HOLLINGS] should have 20 minutes of his own. I was going to suggest, if there was no objection on the part of the majority, and there is none on the Republican side, to his going forward now. If the Senator from Michigan wishes to go first.

Mr. BYRD. I yield 5 minutes to Mr. LEVIN.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 5 minutes.

Mr. LEVIN. Mr. President, I want to congratulate and commend Senator BYRD and all the others who have participated in working out this Byrd substitute. It represents the Senate at its best, at its bipartisan best, because there will be a strong bipartisan vote for this bipartisan substitute that is offered by Senator BYRD.

The basic issue is whether or not authoritative representation of the executive branch as to the meaning and interpretation of the treaty are going to be binding on the executive branch.

That is the gut issue here. It is the issue which we all have to decide as Members of this institution.

Inside that issue there is another issue. Who has the burden of showing that those representations are wrong? Should that burden be on the Senate to go to that portion of the negotiating record which is given to us—and I emphasize only a portion of the negotiating history is given to us—to sniff out the portions of the negotiating history, thousands of pages sometimes, and prove that the representations of the executive branch to this body as to the meaning of a treaty are wrong?

That is putting the burden in exactly the wrong place. We do not have the documents that make up the negotiating history. We have not created those documents. They are not in our possession. The burden belongs on the party that has created the negotiating history—the executive branch; that has possession of the negotiating history—the executive branch. To say that somehow or other we have the burden of going through whatever pieces of negotiating history are offered us to show that authoritative representations to us are wrong puts an unfair burden on this body, a burden that no court would ever put on a party before it, since it is the other party, the executive branch, which is in possession of that history and which is making the representations.

Why should the burden of proving a representation false be on the party that is hearing the representation, rather than on the party that is making the representation? What kind of shift of burden does that represent? A totally unacceptable shift of burden, may I suggest.

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If the opponents of the Byrd substitute are correct, we would have to make all of these representations to us part of the resolution of ratification. In order to make certain that what has been told us is binding on the executive branch, we would have to incorporate every single one of those representations which are relevant and germane and that we care about—and this could be hundreds and perhaps thousands of representations—we would then have to go and make them part of a resolution of ratification in order to make them binding on the executive branch we are told.

That is a cumbersome process, a process which will make the treaty ratification procedure completely unworkable. It will bog down. But that is what would happen. If this amendment is defeated, what we are going to have to do is make all of those representations part of the resolution of ratification.

Now, let us say we followed that process. Let us assume we accepted that challenge, we took on ourselves the burden of showing that representations were false, we took on ourselves the burden of making all those representations part of the Resolution of Ratification. Let us say we did accept that challenge. What then? We still have two treaties. My friend from Pennsylvania says his approach avoids two treaties. No, it does not. No, it does not. Because if we make those representations that have been made to us explicitly a part of the Resolution of Ratification, I think my friend from Pennsylvania would concede that they are then binding on the executive branch.

Mr. Culvahouse concedes that. And then if they are binding on the executive branch because they have been explicitly made part of the Resolution of Ratification, they are now explicit and no longer just implicit. We then have two treaties just the way we have two treaties under the analysis of the Senator from Pennsylvania.

Let me tell you why it works that way. And I am now quoting from the Culvahouse letter. Culvahouse says in his letter of March 17,

As a matter of domestic law, the President is bound by shared interpretations which were both authoritatively communicated to the Senate by the executive and clearly intended, generally understood and relied upon by the Senate in its advice and consent to ratification.

And this is the key line.

This is true,

Culvahouse says,

even if the treaty negotiating record and subsequent practice indicate an interpretation contrary to that shared understanding.

I would ask my friend, the majority leader, if I could have 2 more minutes.

Mr. BYRD. Mr. President, I yield 2 additional minutes.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 2 more minutes.

Mr. LEVIN. Unless my friend from Pennsylvania rejects the Culvahouse approach—and I assume he does not and accepts it—he is saying make it explicit, show you relied upon it, prove you intended it, and then he says it is OK to have two treaties.

Now, what kind of principle is that? You wrap yourself in a principle that you do not want to have two treaties, one between us and the Executive and one between the Executive and the other country, but then you say,

Oh, but it is OK to violate that providing you make it explicit in the Resolution of Ratification.

Just make it explicit, we are told by Mr. Culvahouse.

So what I am suggesting, Mr. President, is that the approach of the Senator from Pennsylvania does not indeed avoid the two-treaty problem at all. He has wrapped himself in a principle and then violated it unless he rejects the Culvahouse approach.

Now, I reject the Culvahouse approach because it is not logical and it is burdensome to say that we have to make those representations which have been made to us explicit. I think we have a right to rely on the representations of the executive branch. If we are smart, we will check the negotiating record in many instances where there is some indication that those representations may be shaky or there may be other reasons for checking the negotiating record.

So my friend was precisely wrong when he asked the Senator from California whether or not it makes any sense to support an amendment which says that the negotiating record is not material. This amendment does not say the negotiating record is not material. Not at all. The negotiating record remains material to our deliberations. It is material in these deliberations.

So the conclusion is this. Opponents would give us a burden which does not belong to us but belongs to the party that is making the representations, the same party that has in its possession the entire negotiating history. It would create a cumbersome process because we would be required to put all of those representations to us explicitly into the resolution of ratification, and it would do so to achieve no principle, because if we accepted that challenge and incorporated all of those representations in the resolution of ratification, we then would still have two treaties, one binding on the executive branch and the Senate and one between the executive branch and the Soviet Union.

I hope we will adopt this amendment. The Byrd substitute carries out the most important institutional, not only prerogatives but obligations of the Senate in the treaty-making process. Without this amendment and the principles it embodies, the Senate's function will have been severely diminished because we will never know what the real treaty is, the real treaty being something out there that was

negotiated between the executive branch and the other country. We could then not rely on the representations that have been made to this body by the executive branch. So I hope there is an overwhelming bipartisan vote for this amendment.

Mr. President, I ask unanimous consent that a portion of Judge Greene's opinion also be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

(Civil Action No. 88-0992)

EXCERPT—JUDGE HAROLD H. GREENE

OPINION

I

This is the third time that these parties have been before the Court with respect to similar controversies.*

In October 1985, at the request of Rainbow Navigation, Inc. (Rainbow), the Court issued an injunction against the Department of the Navy, restraining Navy plans to deprive Rainbow of the preference granted to it by the Cargo ***.

Similarly, the treaty goes on to state in Article IV that the "provisions of this Treaty and any implementing arrangements concluded pursuant to Article I shall apply notwithstanding any prior inconsistent law or regulation of the United States of America. . . ." Thus, the treaty mandates in terms that, for domestic law purposes, it displaces existing American law.

Perhaps even more significant than the treaty language are the representations made by Executive Branch officials to the United States Senate in connection with the ratification proceedings. These statements, discussed below, clearly support the interpretation that rights would vest without further legislation, for the officials represented to the Senate that if ratified, the treaty would protect the existing U.S./flag presence on the United States-Iceland route.¹⁷

Thus, at the hearings on ratification of the treaty, the Honorable Edward J. Derwinski, Counselor of the Department of State, with Rear Admiral Walter T. Piotti, Jr., Commander of the Military Sealift Command, at his side, assured the Senate that he agreed with the statement by American maritime organizations of which the following paragraph is a part:

The ABM Treaty Interpretation Resolution, Report of the Committee on Foreign Relations, United States Senate, S. Rep. No.

*The parties are the Department of the Navy and some of its officials, Rainbow Navigation, Inc., the International Organization of Masters, Mates & Pilots (the Union), and Iceland Steamship Co., Ltd. (Eimskip). Eimskip is before the Court for the first time in the current phase of the litigation.

¹⁷ The Department of Justice disavowed in court the representations made by the Navy and the Department of State to the Senate during treaty ratification proceedings as merely "precatory" and "non-binding." Hearing on Rainbow's motion for a temporary restraining order, April 15, 1988. This position is disturbing since it undercuts the foundation upon which Senate ratification was based, at least in part. As Professor Henkin recently testified:

The President can only make a treaty that means what the Senate understood the treaty to mean when the Senate gave its consent. . . . The Senate's understanding of the treaty to which it consent is binding on the President. He can make the treaty only as so understood. He cannot make the treaty and insist that it means something else. . . . the Constitution clearly implies [] that it is what the Senate understands the treaty to mean—that is what the treaty means for purposes of its consent.

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164, 100th Cong., 1st Sess. 49 (1987). See also Restatement (Second) Foreign Relations Law of the United States (Revised), Tentative Draft No. 6 (1985), § 314, comment d and § 314(2):

The Administration must further assure that the Treaty, if ratified, will be implemented in such a fashion that the existing United States-flag service in the Iceland trade will not be disadvantaged. In other words, the United States-flag presence and the maritime employment will be maintained just as if the 1940 Act were fully in effect in the Iceland trade.¹⁸

Similarly, on the question as to how the treaty would affect Rainbow, the only U.S.-flag carrier on that route, Senator Mathias asked and Mr. Derwinski replied:

Senator MATHIAS. What about the current American flag carrier? Are there any plans in effect to save harmless the current cargo carrier that is now carrying supplies to the [U.S.] military base in Iceland?

DERWINSKI. My understanding is that the current carrier has been involved in a number of discussions with appropriate authorities, and despite the fact that we could not provide, obviously, within the treaty for specific protection for an entity, we did have in mind at all times the need to protect the interests of the current carrier (emphasis added).¹⁹

Relying in part upon these representations, the Senate Foreign Relations Committee recommended that the Senate ratify the treaty. In fact, the Committee stated in its report to the full Senate that advice and consent were being conditioned upon three assurances given by the Departments of State and Defense, one of them being that "the treaty will be implemented in such a way that the existing United States-flag service in the Iceland trade would not be disadvantaged as a result of the Treaty. The Committee received these assurances at its hearing and recommends advice and consent on that basis only."²⁰

Two days after the Committee Report was issued, and on the day the Treaty was ratified, Senator Pell repeated this condition of ratification on the Senate floor.²¹

This history clearly shows that the Senate was concerned about protecting the interests of the current American carrier;²² that to give meaning to that concern, it intended the treaty to provide that protection without further requirements; and that the Executive Branch agreed.

By even raising the standing issue, the Navy is adding to its pattern of false representations discussed in Part I, *supra*. Having assured the Senate that the treaty would not disadvantage the "existing United States flag service . . . [and that] United States presence and the maritime employment will be maintained" as under the Cargo Preference Act, the Navy is now arguing through its counsel that this assurance is meaningless unless new implementing legislation is first enacted. No mention appears to have ever been made to the Senate or its committee regarding implementing legislation or the need therefor, and the Administration has never proposed such legislation.

The Court concludes that the Iceland treaty is self-executing and that Rainbow

and the Union have standing to bring this action.

As to the other threshold defenses advanced by the Navy, they either fall away upon the determination that the treaty is self-executing or they are otherwise unfounded. The Navy protests that the Court lacks subject matter jurisdiction over Rainbow's claims, but according to 28 U.S.C. § 1331, "[t]he district courts shall have original jurisdiction of all civil actions arising under . . . treaties of the United States." See also U.S. Const. Art. VI Cl. 2. And it is of course well established that the review provision of the Administrative Procedure Act, 5 U.S.C. § 502, waives sovereign immunity for injunction actions.²³

IV

The Court now turns to the merits of Rainbow's complaint and its request for a preliminary injunction.²⁴ Rainbow alleges that the 1988 Navy procurement for the United States-Iceland route is contrary to the language and the purposes of the memorandum of understanding. The Navy's answer is that two competitions between American and Icelandic shippers are permitted by the treaty and MOU—one competition for 65% of the cargo, and a second competition for 35% of the cargo. In the opinion of the Court, that construction of the treaty and the MOU is untenable.

The language of the MOU²⁵ is straightforward and unmistakable:²⁶

... Each competition shall result in contract awards to both an Icelandic shipping company and a United States flag carrier such that not to exceed 65 percent of the cargo shall be carried by the lowest bidder and the remainder shall be carried by the next lowest bidder of the other country . . . (emphasis added).

Thus, according to the MOU, for any given shipment period, there is to be a single competition dealing with 100% of the cargo. At each such competition, the Navy

awards up to 65% of the cargo to the lowest bidder—a shipper from either country—and the remainder, 35% of the cargo or more²⁷ to the next lowest bidder—a shipper from the other country.

However, under the Navy's construction of the MOU, and under the awards procedure it contemplates, the "next lowest bidder" will never receive any portion of the contract. That result is achieved by having two competitions rather than one: once the lowest bidder from one country wins the contract for 65% of the cargo, instead of the remainder going to the next lowest bidder, a second competition is held for that remainder at which, again, the lowest bidder prevails. With respect to neither competition will the "next lowest bidder" even be considered; it would have to be the lowest bidder in the second competition to receive any portion of the contract.²⁸ The language in the MOU referring to the "next lowest bidder" is simply disregarded and given no effect.

The language of the MOU—which the Court finds to be unambiguous in its support of Rainbow's position—is further buttressed by the construction placed thereon by the Secretary of Defense himself. Secretary Carlucci wrote as follows on March 25, 1988 to Senator Lugar of Indiana, a member of the Committee on Foreign Relations:²⁹

The treaty and implementing memorandum of understanding foster competition between U.S. and Icelandic flag carriers for 100 percent of the cargo transported by sea between Iceland and the United States for purposes of the 1951 Defense Agreement between the two countries. The overall low bidder is awarded 65 percent of the cargo and the low bidder of the other country is awarded the remaining 35 percent. This is how the existing contracts were awarded.

Thus, the Secretary concluded that the MOU requires a single competition in which the contestants bid for 100% of the cargo, and that the "overall low bidder" wins a contract to carry 65% of the cargo, while the "remaining 35 percent" goes to the low bidder from the other country—precisely as Rainbow asserts. Any still remaining doubt is allayed by the Secretary's reference to a continuation of the method by which the existing contracts were awarded. Those (1987) contracts were, of course, awarded precisely on the basis of the interpretation of the MOU urged upon the Court by Rainbow.

V

Rainbow and its seamen have an extremely strong likelihood of success on the merits. These parties also stand to be irreparably harmed if the procurement is not enjoined. As concerns Rainbow, its business would in all likelihood have to be shut down; as regards the Union, its members employed by Rainbow will lose their jobs. Indeed, the Court is persuaded, on the basis of the evidence before it, that Rainbow cannot secure alternate shipping business and that, in view of the depressed nature of the American merchant marine, its seamen are unlikely to find new employment.

By issuing a preliminary injunction, the Court preserves the status quo between the parties.³⁰ And, in view of the existence of

¹⁸ United States-Icelandic Treaty on the Carriage of Military Cargo: Hearings on the Treaty Before the Comm. on Foreign Relations, 99th Cong., 2nd Sess. p. 9 (1986).

¹⁹ Id. at 11.

²⁰ S. Rep. No. 27, *supra*, note 5.

²¹ 132 Cong. Rec. S15661 (daily ed. October 8, 1986).

²² As this discussion illustrates, Rainbow has standing since it could hardly be more directly within the "zone of interests" protected by the treaty.

²³ See *Warin v. Director, Department of Treasury*, 672 F.2d 590, 591-92 (6th Cir. 1982); *Neal v. Secretary of Navy*, 639 F.2d 1029, 1036-37 (3d Cir. 1981); *Jaffee v. U.S.*, 592 F.2d 712, 717-719 (3d Cir. 1979); *Beller v. Middendorf*, 632 F.2d 788, 796-97, 799 (9th Cir. 1980).

²⁴ To prevail on a motion for a preliminary injunction, Rainbow must show (1) that it has a substantial likelihood of prevailing on the merits; (2) that it will be irreparably harmed if an injunction is not granted; (3) that the interests of all affected parties are properly balanced by the said relief; and (4) that the public interest is clearly served by the issuance of an injunction. See *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 291 (D.C. Cir. 1958).

²⁵ An MOU is an international executive agreement which must be interpreted according to the principles applicable to treaties. *Air Canada v. U.S. Department of Transportation*, No. 87-1300, slip op. at 6 (D.C. Cir. Apr. 15, 1988). The general rule in interpreting treaties is:

The clear import of treaty language controls unless "applicable of the words of the treaty according to their obvious meaning effects a result inconsistent with the intent or expectations of its signatories."

Sumitomo Shoji American, Inc. v. Avagliano, 457 U.S. 176, 180 (1982) quoting *Maximov v. United States*, 373 U.S. 49, 54 (1963).

²⁶ "An international agreement is to be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its objects and purpose." Restatement of the Law (Second) Foreign Relations Law of the United States (Revised), Tentative Draft No. 6 (1985), § 325(1). This same rule of interpretation is prescribed by the Vienna Convention of the Law of Treaties Article 31(1). S. Exec. L. 92d Cong., 1st Sess. (1971), 8 I.L.M. 679. As the State Department has noted, "the Convention is already recognized as the authoritative guide to current treaty law and practice." Id.

²⁷ More than 35% of the cargo will be so awarded if the lowest bidder takes less than 65%.

²⁸ Rainbow claims that, for a variety of reasons, it will not be able to compete effectively under the Navy's two competition system, and the Court is persuaded on the basis of the evidence available at this juncture, that this representation is correct.

²⁹ Secretary Carlucci's letter was attached to the Union's motion for preliminary injunction.

³⁰ Rainbow will continue to carry its share of the cargo under the 1987 procurement, and so will

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present arrangements, there will be no interruption of the delivery of the cargo and thus no injury to the public interest or to the defendants.

VI

As indicated, the recent events connected with implementation of the treaty represent the third time that the Navy has attempted to eliminate Rainbow, a small American-flag shipper, from the Icelandic trade. In 1985, the Navy announced and assured the Court that Rainbow had to be disqualified from a cargo preference because its rates were excessive. Upon examination, it was found that this was untrue and that the real reason for the attempted disqualification was the Department of State's plan to permit Icelandic shippers to regain their monopoly with respect to that trade. In 1986, the Navy assured the Court that Rainbow's services could be dispensed with because military aircraft which were flying by way of Iceland anyway could perform Rainbow's role. Upon inquiry, it became apparent that, contrary to the Navy's assurances and contrary to binding regulations, military aircraft were capable of taking on that role only if they were diverted from their normal duties.

Now the Navy is attempting to eliminate Rainbow once again, this time under the treaty with Iceland. The present effort is as disingenuous as the other two. The construction of the memorandum of understanding adopted by the Navy is contrary to the ordinary meaning of the language contained in that document. It is contrary also to the assurances given by Mr. Derwinski and Rear Admiral Piotti, Jr., to the Senate Committee on Foreign Relations when the treaty was before the committee for ratification. And it is contrary, finally, to an interpretation of the treaty announced just two months ago by Secretary of Defense Carlucci himself.

The Court understands that Iceland is a staunch ally of the United States, and it sympathizes with the efforts of our government to satisfy the demands of that nation. But this may not be done at the expense of one of the few remaining American-flag vessels of our merchant marine and the few remaining American seamen who have found employment there. More particularly, this may not be done in violation of American law, of the language and purpose of a treaty, and of the solemn representations made to the United States Senate in connection with the ratification of that treaty.

The Court has accordingly, once again, enjoined the Navy's attempt to put Rainbow out of business.

May 17, 1988.

HAROLD H. GREENE,
U.S. District Judge.

The PRESIDING OFFICER. Who yields time?

Mr. WILSON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Mr. President, once again, before the Senator from South Carolina takes to his feet, I wonder if he would object to the Senator from Texas taking 3 minutes.

Mr. HOLLINGS. Go right ahead.

Mr. WILSON. Mr. President, I yield 3 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, maybe I can give a little of that time back. I know people get confused during all this debate with all these fancy terms, but I just want to convert it into English. The real debate is this. You can put it in an analogy. A fellow goes out and he goes down to the Back Street Motors and he buys a used car, and he has a contract and he comes back and he wants his wife to be happy with the car and the contract so he tells her what is in the contract. And if he is lucky, she smiles and kisses him and says that was a really good deal. Now, incidentally, there is a dispute about this contract and they go into court, and the fellow who bought the car says, "You ought to look at the contract and you ought to look at what I told my wife. That is what I ought to be bound with, what I told Sara."

Now, the fellow who sold the car says, "Now, wait a minute; I never even met Sara. I want you to look at the contract we signed, and I want you to look at what we each said when we signed it."

If you believe what this fellow told his wife, that was the contract in buying this used car which ought to be binding, then you want to vote for this amendment. On the other hand, if you think you have a more accurate picture by looking at what the fellow said when he was talking to the used car dealer then you are going from what he said to his wife, you want to vote no on this amendment. That is about as clear as it can be clear.

Mr. SARBANES. Mr. President, will the Senator yield for a question on my time?

Mr. GRAMM. I would be happy to yield for a question.

Mr. SARBANES. Does that fellow who bought the car need the consent of his wife in the example the Senator is postulating does he have to have his wife's consent to buy the car?

Mr. GRAMM. It was a joint bank account in my example. I did not make that clear. Yes. He did. I think the fact that he has to have his wife's consent tells one why one needs to especially go back and look at what he said with the used car dealer, because he has to have her consent to sign the check. He is likely to make it look like as good a deal as he possibly can make it look.

So the Senator simply made my point.

I yield back the balance of my time.

The PRESIDING OFFICER. Who yields time?

Mr. WILSON and Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. If there are no objections, I think it would be appropriate, if the majority leader agrees, that the Senator from South Carolina take his 20 minutes with the understanding under the majority leader's unani-

mous-consent request that that be charged to neither side.

The PRESIDING OFFICER. The Senator from South Carolina is recognized on his own time for 20 minutes.

Mr. HOLLINGS. Mr. President, let me thank our distinguished majority leader for protecting our rights and providing me this opportunity. He has been very considerate, as always, and he has been very sincere in trying to bring order out of this chaotic nonsense that we have worked ourselves into. I use that word "nonsense" advisedly.

My friend and desk mate, Senator BIDEN, is not here. He and I have had discussions, and I know he was very well intentioned in presenting this amendment. It is unfortunate that he cannot be here. The Senator from West Virginia, in his opening comments, observed that the whole idea with this amendment is to strengthen the role of the U.S. Senate in the interpretation of treaties, and the need for that strengthening arose as a result of the ABM dispute.

I want to make the record absolutely clear by pointing out, in a tactful and dignified fashion, that this particular dispute has been conceived and framed in error. I and several others here today were Members of that U.S. Senate that advised and consented on the ABM Treaty in 1972. Previous to ratification of that treaty, I had the opportunity, with then-majority leader Mike Mansfield, to visit in what we called the "tent" in Helsinki where our distinguished President met with those who negotiated the ABM Treaty. Senator NUNN, the Senator from Georgia, has framed this "re-interpretation" dispute, asserting that President Reagan tried to reinterpret the ABM Treaty. I was taken aback by Senator NUNN's presentation. I knew differently. I did not have time in the spring of 1987 to immediately respond to him. But, later in the year, I did have the opportunity to rebut Senator NUNN here on the floor of the Senate, in a lengthy Washington Post op-ed column, and before the Foreign Relations Committee.

I want to reiterate, today, that the ABM Treaty is best understood through the testimony of those who negotiated it. And those negotiators speak very unambiguously and authoritatively.

My time is limited, but I would like to cite several statements by the ABM Treaty principals. Gerard C. Smith, who was our chief ABM Treaty negotiator, testifying a response to a question on future ABM systems, practically, restated Agreed Statement D when he said:

One of the agreed understandings says that if ABM technology is created based on different physical principles... work is (sic) that direction, development work, research, is not prohibited, but deployment of systems using those new principles... would not be permitted unless both parties agree by amending the treaty.

Eimskip, the Icelandic carrier. The Court takes no position on the issue of how Eimskip should be paid for transporting its 65% of the cargo during the period of this injunction. That is a matter for resolution between the Navy and Eimskip.

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In later testimony before the House, he stated that:

If such systems are developed, and one or the other side wants to deploy them under the limitation of this Treaty, there would have to first be a discussion of the question in the Standing Consultative Commission we are proposing to establish under the Treaty, and then the Treaty would have to be amended before such novel ABM system would be deployed.

When Senator Barry Goldwater asked Negotiator Smith:

Under this agreement are we and the Soviets precluded from the development of the laser as an ABM? Mr. Smith: "No, sir."

On June 19th, appearing with Secretary of State Rogers before the Senate Foreign Relations Committee, Ambassador Smith, Director of ACDA, responded to the question by Senator Aiken as follows:

Mr. Smith: Senator Aiken. I think it is an entirely different problem with respect to the one of lasers to help guide offensive missiles and from their use to guide defensive missiles, but we have covered this concern of yours in this treaty by prohibiting the deployment of future type technology. Unless the treaty is amended, both sides can only deploy launchers and interceptors and radars. There are no inhibitions on modernizing this type of technology except that it cannot be deployed in mobile land-based or space-based or sea-based configurations. But the laser concern was considered and both sides have agreed that they will not deploy future type ABM technology unless the treaty is amended.

In his book, "Double Talk," Gerard Smith stated that the ABM Treaty:

Should keep future generations of ABMs that American and Soviet weaponers may conceive of in the infancy of research and development." (page 455).

I also met Lt. Gen. Royal Allison in that "tent" in Helsinki. Regarding future AMB systems, General Allison stated on June 21, 1972, and I quote:

(a) Constraints in the Treaty apply to deployment only. Research and development are not constrained.

(b) The U.S. Delegation, under instructions, sought a clear-cut ban on deployment of future ABM systems but the Soviets would not agree. Hence the finally agreed and initialled interpretative statement: [quoting Agreed Statement D].

(c) Article III spells out the ABM defenses which can be deployed—one site for NC and one site for ICBM defense—utilizing components described in Article III (ABM interceptor missiles, ABM launchers and ABM radars).

The upshot is that to be accurate we must avoid the connotation of an absolute "ban" in discussing future ABM systems. We should say that there is an obligation not to deploy such systems without taking certain specified and agreed steps; i.e., in the event such systems are created in the future, specific limitations on them would be subject to discussion and agreement.

In September, 1977, then-Secretary of Defense Harold Brown, a negotiator, purportedly stated in the course of the 5-year periodic review of the treaty that the Soviet Union did not believe the treaty precluded the development and testing of future ABM systems, and that the Chairman of the Joint Chiefs of Staff also believed the

treaty placed no limitations on development and testing of ABM systems based on other physical principles.

Former negotiator Paul Nitze analyzed the treaty and in testimony before the Senate Appropriations Committee on March 19, 1987 stated: "In sum, my recollection of the negotiating process leaves me convinced that the Soviets agreed in a binding manner to prohibit only the deployment, not the creation, that is, the development and testing, of systems based on other physical principles and their components capable of substituting for conventional components as defined in Article II, regardless of basing mode."

Henry Kissinger, former Secretary of State and National Security Adviser at the time the treaty was negotiated, has also affirmed, "I personally believe the broad interpretation of the Anti-Ballistic Missile Treaty to be more nearly correct than the narrow interpretation."

General Bruce L. Palmer, Jr., is often misinterpreted or misquoted by those favoring the narrow interpretation. Let me set the record straight. General Palmer in testimony before the Senate Armed Services Committee on July 19, 1972, stated, "My understanding is in the defensive area, R&D on such systems is basically prohibited." Realizing he had made a mistake, he later stated, "I would like to correct my statement. I was referring to the deployment of such systems. There is no limit on R&D in the futuristic systems, but would require an amendment of the treaty or further agreement to deploy such a system"

Incidentally, Mr. President, I have not found a Senator yet from 1972 to say he was mislead. Find me one and I will jump off the Capitol dome. But I want to emphasize this point. Not a single Senator who participated in the 1972 debate has come before us and said, "Oh, heavens, I was mislead. Now they are claiming a different treaty than the one I voted for."

Mr. President, I continue by citing Adm. Thomas Moorer. The theme of the "broad" interpretation is embodied in both the fiscal years 1974 and 1975 "Posture Statements" by then-Chairman of the Joint Chiefs of Staff, Adm. Thomas Moorer. The parameters established by our own military after ratification of the ABM Treaty were consistent with the broad interpretation espoused by President Reagan. In his "Military Posture for Fiscal Year 1974," the JCS Chairman wrote:

As a hedge against the emergence of new threats which could gravely jeopardize our national safety, we plan to continue . . . new technological approaches to even more advanced ABM systems. The strategic situation is still fraught with many uncertainties. It is only prudent, therefore, that we continue our efforts to advance our ABM technology to the full extent permitted by the Treaty. This is the kind of action the Joint Chiefs of Staff had in mind with regard to the third of the "three assurances" I pre-

sented to this Committee last summer in connection with the Hearings on the SAL Agreements; namely, full support of a "vigorous research and development program."

In the fiscal year 1975, "Posture Statement," the chairman repeated the general thrust of the 1974 statement, but added:

. . . and retain the option to deploy a more advanced ABM system for the defense of the National Command Authority or to deploy a more extensive system should the ABM Treaty be abrogated for any reason.

The letter of transmittal accompanying the treaty from Secretary of State Rogers stated unequivocally that:

Development, testing, and development of ABM systems or ABM components that are sea-based, air-based, space-based or mobile land-based are prohibited; deployment (and not research and testing) of ABM systems involving new types of basic components to perform the current functions of ABM launchers, interceptors, or radars is prohibited . . .

Senator Fulbright stated, "the treaty permits modernization and replacement within the present technology but does not permit the deployment of a system or component capable of substituting for ABM interceptor missiles, launchers, or radars."

Senator Fong stated on page 29707 of the RECORD: The principal provisions of the ABM Treaty may be summarized as follows:

* * * Fourth, Allows research and development on ABM systems to continue, but not the deployment of exotic or so-called future systems.

The 6-hour debate on the ABM Treaty's resolution of ratification in August 1972 hardly refers to the issue at hand. Rather, the debate was on the pending SALT I Treaty ratification and the pending Jackson amendment to that treaty. There was no question that the Senate, in the ratification of SALT I and the Jackson amendment within the same month of 1972, had clearly in mind research and development. For the Jackson amendment provided: ". . . the Congress considers that the success of these agreements and the attainment of more permanent and comprehensive agreements are dependent upon the maintenance of a vigorous research and development and modernization program leading to a prudent strategic posture."

Any question about the right of the United States to research, test and develop and the Congressional intent in the ratification of the ABM Treaty becomes categorically clear by the same Congress providing in its appropriation for research, testing and development of futuristic systems as follows:

Fiscal year 1973

	Million
Army, Laser Technology Program	\$11.9
Navy, high energy laser	18.2
Air Force, strategic laser technology	1.3

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DARPA, Short-wave laser technology.....	Million 20.0
Total fiscal year 1973 appropriation	51.4
Fiscal year 1974	
Army, laser technology	Million \$11.7
Navy, high energy laser	19.5
Air Force, strategic laser technology	3.0
DARPA, short-wave laser technology	17.0
Total fiscal year 1974 appropriation	51.2

Garthoff claims that the Soviets agreed to ban deployment of futuristic ABM technologies on September 15, 1971. Yet a cursory review of the negotiating record reveals at least 22 instances between late September and February 1 where negotiators focused on the Soviets's steadfast rejection of United States proposals to outlaw futuristic ABM systems.

The impasse on this issue was resolved December 20 when Garthoff and his Soviet counterpart agreed to defer the issue of futuristic systems to a separate addendum to the treaty. That addendum, Agreed Statement D, communicates very clearly that future ABM systems based on other physical principles are permitted. As Soviet negotiator V.P. Karpov wrote in the May 29, 1987 *Izvestia* on the occasion of the treaty's 15th anniversary,

It would [have been] premature to make new systems subject to the same limitations as existing ones. At the same time, we believed it necessary to supplement the treaty with a provision introducing additional limitations on the DEPLOYMENT of ABM systems or their components which would be created on the basis of new technologies. Agreed Statement D introduced them.

Article II, paragraph 1 of the ABM Treaty states that, "For the purposes of this treaty an ABM system is a system . . . currently consisting of . . ." Paragraph 2 further specifies that the five types of systems covered by this definition are those that are "(a) operational, (b) under construction, (c) underground testing, (d) undergoing overhaul, repair or conversion, and (e) mothballed." All of these are manifestly "current" in nature. Nowhere in article II is there mention of "future" systems. Everywhere in the negotiating record and in statements by the negotiators, future systems were to be dealt with elsewhere than in article II; and thus Agreed Statement D was included to govern future systems. The restrictions in article V, paragraph 1, apply only to the development, testing, and deployment of ABM systems described in article II as "current".

Common sense says that the phrase "currently consisting of" in paragraph 1 is a limiting phrase designed to exclude systems invented in the future. Yet Garthoff insists the opposite: that "current" encompasses "future." In a leap of faith and language, Garthoff asserts that "currently consisting of" was written into the text in order not

to exclude future systems. If, as Garthoff claims, the research, testing, and development of "future" as well as "current" systems are governed by the main body of the treaty, then Agreed Statement D—whose sole thrust is to spell out the treatment of "future" systems—would be superfluous.

In brief, the Soviet stance against banning futuristic systems prevailed. Under Agreed Statement D, "creation"—research and testing—of futuristic ABM systems is permitted.

Mr. President, we, as Senators, can dance around the fire all we want, but we are not going to change the elementary principles of contract law.

I understand that we ought to be able to depend on the executive branch when it makes its representations, and I think we can. Likewise, I think they can depend on the Senate, and we should not get bogged down in this intramural dispute over what constitutes a "common understanding" and what does this mean. We have, here, a bunch of nonlawyers trying to make contract law that is not binding whatsoever in the treaty; and, incidentally, it cannot bind the executive branch.

Under the Constitution, we bind the executive branch by three readings in the House and three readings in the Senate and law signed by the President, or an overridden veto. There is no constitutional provision for treaties between the President and the U.S. Senate. There is only a constitutional provision for the Senate to advise and consent with respect to ratification.

Read the Foreign Relations Committee report. The parties who have been engaged in this exercise are trying to get away from the negotiating record because they are distracted and distorted by the so-called Sofaer doctrine and his comments about treaty interpretations being transitory. I am not here either to defend or criticize Sofaer or anyone else. The fact is that he indulged in an unfortunate exercise at that time, and we have been distracted ever since.

Any contract lawyer will say: "Senator, I will take you into court. You are bound by the words and language of that treaty."

If there is an ambiguity, we then go first to the negotiating record. Otherwise, there is the parole evidence rule. You cannot say what you "thought" the contract meant. The judge will not allow such testimony.

Mr. President, we can pass this amendment, and, likewise, the President can ignore it. Presidents have ignored our unconstitutional actions in the past. We had three readings in the House and three readings in the Senate and overrode his veto of the war powers resolution, and it has been ignored by the executive branch ever since.

So let us not get exercised about words, and let us not indulge in allegations that there was a reinterpretation of the ABM Treaty. I am willing to

debate this matter at any time, anywhere.

I have talked to the best of lawyers and the best of minds, and they all agree that R&D on strategic defense is permitted. Nonetheless, we have been derailed politically by pressure from the other body not to get into certain advanced technologies. We cannot even get conventional cruise missiles through this Congress. We cannot get an ASAT system; we cannot test.

We are not doing our duties around here, and it disturbs me, but let us not ignore the Constitution this afternoon, in a misguided effort to reaffirm our constitutional authority. We do protest too much. No Senate condition or action is going to embellish or enhance, and no Senate action is going to take away from that constitutional authority which is undisputably ours.

We are trying to give legal aura and precedent to political shenanigans. There is a meeting of the minds between the two parties to the treaty, and now we are coming in with a separate treaty, a meeting of the minds between the President and the Senate, and that approach is not going to fly. That is what the root issue is here. Opponents of SDI are attempting to seize the high ground on the treaty itself, because it is easier to argue that they are constitutional and law-abiding than it is to argue against R&D on a particular advanced technology.

I am for defense, but I am prohibited from defending this Nation. That is what is involved in this particular exercise. We all know it, and it is unfortunate that we got into this situation.

I am glad to present what Mr. Garthoff said, because he said that there was a meeting of the Soviet and American minds on September 15, 1971. It was all agreed to. But I then went back to the record, and I picked out 22 instances thereafter where it is clear that there was no such agreement.

I ask unanimous consent that this material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SOVIET REJECTIONS OF LIMITATIONS ON FUTURISTIC ABM SYSTEMS SUBSEQUENT TO SEPT. 15, 1971

1. September 17, 1971. Smith: . . . had the feeling that the Soviet position on Article 2 reflected a desire that nothing be done to prejudice the Soviet position on the issue treated in paragraph 1 of Article 6.

Semenov: . . . bearing in mind that inclusion of uncertainties in an agreement would surely lead to all sorts of misunderstandings in the future. . . . with reference to the U.S. position on Article VI . . . he would not care to say any more. . . . this problem would be kept in his field of vision. . . . for the next Vienna phase.

2. September 20, 1971. Garthoff: stated there would remain seven points of difference including a provision to cover future "unconventional" ABM systems. . . .

3. November 30, 1971. Shchukin: . . . the Soviet side cannot recognize as well-founded the proposal of the U.S. involving an obliga-

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tion not to deploy ABM systems using devices other than missiles, launchers, radars. The subject of a Treaty (Agreement) could only be a specific and concrete limitation of ABM systems. * * *

4. December 7, 1971. Garthoff: On Article V, both sides reiterated the strong positions which they hold on the question of the paragraph relating to future systems. * * * Kishilov and Grinevsky flatly asserted that they were certain there would be no change in the position on the Soviet side.

5. December 10, 1971. Brown: The Soviet side has objected to limits on possible future ABM systems on the basis that such systems are defined only in general terms.

6. December 14, 1971. Nitze: noted in connection with Shchukin's comments * * * on future systems he had emphasized the inappropriateness of this subject for treaty language. * * *

7. December 14, 1971. Semenov: Although Dr. Brown said that the question of future ABM systems, which do not include launchers, radars, and interceptors. * * * I would like to ask what this is all about in concrete terms. In what does the U.S. side see a danger in the absence of a provision on this account in the treaty? If these systems cannot be defined now, except that they are not something known today, and, at the same time, the draft treaty includes a number of clear limitations and constraints not to deploy territorial ABM systems, not to give the capability for rapid reload, etc., is it not sufficient to have such limitations? To be sure, including in the treaty a provision covering something that is not known cannot be justified by any considerations, and therefore this proposition cannot be the subject of a treaty.

8. December 17, 1971. Garthoff: On future ABM systems, I suggested to Kishilov the possibility of a new approach to meeting the issue. Perhaps it would be possible to have a clear and explicit understanding, for example, in an agreed minute, that neither side would deploy a future ABM system or components without prior consultation and mutual agreement in the Standing Consultative Commission.

9. December 17, 1971. Garthoff: Grinevsky referred to the conversation I had had that morning with Kishilov concerning a possible alternative approach to handling future ABM systems. * * * handling these matters through the Standing Consultative Commission, rather than through explicit treaty provisions, offered a possible resolution to our differences.

10. December 20, 1971. Semenov: * * * suppose that the draft treaty had a provision on limiting systems other than those now known which use interceptors and launchers such a provision would create the grounds for endless arguments, uncertainties. He asked if the goal of the two Delegations isn't just the opposite, that is to reach agreement on limiting known ABM systems, certainly such limitations on known ABM systems constitute a factor for relaxing international tension and curbing the race in strategic arms and limiting them. How then could an ABM treaty include a provision about whose content the sides do not have the vaguest notion? Could the sides include in an ABM treaty the unknown without risk of making the treaty indefinite and amorphous? The sides cannot and must not engage in discussion of questions not known to anyone. The task faced by the two sides is to erect reliable barriers against deployment of known ABM components in excess of the levels defined by the ABM treaty. If it should appear necessary to supplement the ABM treaty by a provision prohibiting or limiting other ABM components in addition to those now known, this can be done

in accordance with the procedures provided for in the provision on review.

11. December 20, 1971. Grinevsky: raised the question of dealing with future ABM systems through statements on the record. * * *

Garthoff: noted that the suggestion he had advanced in this respect was for an agreed minute; there must be a clear agreed mutual understanding that, prior to any deployment of future systems there would be consultation and agreement in the Standing Consultative Commission.

12. December 21, 1971. Grinevsky: asked if the American side had proposed language for the suggested separate agreed understanding on future ABM systems.

Garthoff: said he could provide an illustrative draft statement as a possible solution to the impasse over the American proposal for a third paragraph in Article V. The Soviet Delegation has said on several occasions that it is opposed to the proposal by the United States to include a provision in the ABM agreement prohibiting ABM systems in the future which would use devices other than ABM interceptor missiles, ABM launchers, or ABM radars to perform the functions of those components. In order to contribute to negotiating progress, while maintaining our basic position on this matter, the U.S. side is willing to drop Article V(3) if there is clear agreed understanding as part of the negotiating record. An Agreed Minute could read as follows:

The Parties agree that the deployment limitations undertaken in Article I and Article III are not to be circumvented by deployment of components other than ABM interceptor missiles, ABM launchers, or ABM radars for countering strategic ballistic missiles in flight trajectory. They agree that if such components are developed and the question of deployment arises, neither side will initiate such deployment without prior consultation and agreement in the Standing Consultative Commission.

13. January 11, 1972. Shchukin: The Soviet side continues to believe that only quite specific ABM system components of which each side had a clear idea could be included in an ABM treaty. . . . For this reason the Soviet delegation continues to consider this point "not suitable" for inclusion in the draft ABM treaty we were negotiating.

Nitze: said he had understood from Shchukin's remarks that he believed that if ABM components other than radars, interceptors and launchers were developed, they could appropriately be the subject of consultations under Article XIII. However, if such components were developed and could, in fact, be deployed in a manner to circumvent the specific limitations of Article III of the treaty, would it not be appropriate that they also be subject to agreement between our Governments?

14. January 11, 1972. Grinevsky: said that the treaty referred to ABM systems which were defined in Article II. It could not deal with unknown other systems.

Garthoff: challenged this interpretation on two grounds: first, the treaty dealt not only with ABM systems compromising components identified in Article II, but all ABM systems; second, the issue did not concern "other" systems but rather future ABM systems. However, what Garthoff was referring to—and what the U.S. was particularly concerned about—was precisely ABM systems and components of some new kind in the future. Garthoff repeated his reference to laser ABM interceptors as an example. . . .

15. January 14, 1972. Trusov: affirmed the Soviet position that it is premature to discuss limiting systems which are now nonexistent, and that if and when such systems appear then limitation would be subject to

discussion under the provisions of Articles XIII and XIV of the Draft ABM Treaty.

16. January 14, 1972. Shchukin: said he had a very brief comment to make. At the January 11 meeting, Mr. Nitze had asked the question whether so-called "other ABM means" would be a subject not only for appropriate consultation but also for agreement. Both sides agree that they should assume obligations not to deploy ABM systems except as provided in Article III of the draft ABM Treaty. In order to insure implementation of this provision of the Treaty, the sides could, in the event of the emergence of ABM systems constructed on the basis of other physical principles, further discuss the question of their limitation in accordance with Articles XIII and XIV of the draft ABM Treaty.

17. January 14, 1972. Grinevsky: produced a Soviet draft, based closely upon (but not identical with) the statement made in the meeting that morning by Academician Shchukin. The statement read:

"With a view to ensuring the implementation of the provisions contained in Articles I and III of the Treaty on the limitation of ABM systems, the Parties agree that in the event of the emergence of ABM systems based on other principles questions of their limitation may be discussed further in accordance with Articles XIII and XIV of the ABM Treaty."

18. January 26, 1972. Grinevsky: in response to the latest proposed U.S. language on the Agreed Interpretive Statement on future ABM systems strongly urged that the American side not pursue this proposed addition, i.e., a clause reading to perform the functions of ABM interceptor missiles, ABM launchers, or ABM radars. He also commented that his side had now accepted the earlier American formulation completely, and in fact had accepted the American position on the subject entirely, save only that it would be a jointly agreed interpretation rather than a paragraph in the treaty.

DRAFT INTERPRETIVE STATEMENT OF FUTURE
ABM SYSTEMS

In order to insure fulfillment of the obligation not to deploy ABM system components except as provided in Article III of the Treaty, it is agreed that in the event ABM system components other than ABM interceptor missiles, ABM launchers, or ABM radars are created in the future, specific limitations on such system components would be subject to discussion in accordance with Article XIII and agreement in accordance with Article XIV of the Treaty.

19. January 31, 1972. Garthoff: I suggested that perhaps we need a fresh approach, first survey the problem and see if we agreed on the substance of the matter—which I believed we did—and then find appropriate language to express this agreed position. Grinevsky saw that I was speaking from prepared notes and seemed interested. I thereupon gave him a copy. . . . after reading the talking points, Grinevsky said that he believed there was complete agreement.

Garthoff talking points:

It is understood that both sides agree that:

1. ABM systems and their components, as defined in Article II, should not be deployed except as provided for in Article III.

2. The deployment of ABM system components other than ABM interceptor missiles, launchers, or radars to perform the functions of those components is banned.

3. Devices other than ABM interceptor missiles, ABM launchers, or ABM radars could be used as adjuncts to an ABM system provided that the devices could not perform the functions of and substitute for ABM in-

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terceptor missiles, ABM launchers, or ABM radars. For example, a telescope could be deployed as an adjunct to an ABM system, whereas a laser for performing the function of an interceptor missile by rendering ineffective a strategic ballistic missile in flight trajectory could not be deployed.

4. Article III should be drafted so as not to permit the deployment of devices other than ABM interceptor missiles, ABM launchers, or ABM radars to substitute for and perform their functions.

5. If such devices are created in the future, their deployment could be provided for by limitations subject to discussion in accordance with Article XIII and agreement in accordance with Article XIV.

20. February 1, 1972. Allison: I observed that both sides have had a clear understanding for some time that within the context of our negotiations when we speak of an ABM system we are referring to a system made up of three components—ABM launchers, ABM interceptor missiles, and ABM radars. We also appear to agree that substituting a different component for one of these three in the future would result in a "future" or "other" ABM system. It seems that our Delegations should be able to agree on a set of words for the interpretive statement.

21. February 1, 1972. Nitze: It seemed to me to be most likely that if something new were to become possible in the future, that this would be of such a nature as to substitute for either launchers or interceptors or radars, but not for all three.

Shchukin: said that if a new system were developed which could substitute either for radars or for interceptor/launchers, this would be a new system and, as such, subject to Articles XIII and XIV.

22. February 1, 1972. Garthoff: Grinevsky called to say that he believed his Delegation could accept the proposal if the words "based on other physical principles and" were included before the phrase "including components."

AGREED STATEMENT D TO THE TREATY

In order to insure fulfillment of the obligation not to deploy ABM systems and their components except as provided in Article III of the Treaty, the Parties agree that in the event ABM systems based on other physical principles and including components capable of substituting for ABM interceptor missiles, ABM launchers, or ABM radars are created in the future, specific limitations on such systems and their components would be subject to discussion in accordance with Article XIII and agreement in accordance with Article XIV of the Treaty.

Mr. HOLLINGS. Mr. President, I regret that this afternoon we have become embroiled in this dispute, because it does not reflect well on the U.S. Senate, as a mature, deliberation body, when what we are doing is playing "catch the President." I prefer to catch Gorbachev. I want to bind him in a treaty. If we can get a treaty, let us advise and consent to it; if the Senate disagrees with that agreement made by President Reagan and Secretary Gorbachev, then let us put a reservation in. But do not embarrass us by saying: "Here is a condition—and, by the way, don't bother telling the Soviets, because we are just imposing a constitutional binder on our own executive." No Congress is going to bind a future Congress. We have to work together and trust each other.

There has been a misunderstanding regarding the ABM treaty. But you

cannot enact a law that will prevent any other misunderstanding in the future.

The bottom line is that supporters of the Byrd amendment are trying to say: "By the way, what we say does not mean what is says." But it is obvious on the face of it that their objective is to supersede the authority of the negotiating record. That is the whole purpose of the ABM debate on the so-called narrow interpretation.

Advocates of this amendment assert, and I quote the Foreign Relations Committee's report, "In sum, the President may not act upon the Senate's consent without honoring this condition."

That is wishful thinking. The President is acting now, in my opinion, in open disregard of the War Powers Resolution right out in the Persian Gulf. Do not worry about it. We all sit around and pontificate that there are certain limits to our powers. I quote, "Knowing what he or his administration does by statement or action whether before or after the act of ratification can alter the binding effect of any condition which the Senate places upon its consent for treaty ratification."

That is not so at all. No one really believes that. Sure, someone can write it. But you take the case up in a court of law, you take it up in an international court or before the U.S. Supreme Court. They are going to tell you differently. I tell you that right now.

That is not to say these authoritative understandings mean nothing. They mean a lot. What I am saying, what the other Senator says, all has significance, but it will be weighed in the light of whether you are really faithful to the negotiating record in determining the intent; whether you are using that record in authoritative and common understandings at the time to clarify ambiguity. Otherwise, the treaty speaks for itself. Certainly, the ABM Treaty does. It is clear, both in the negotiating record and in authoritative testimony by the principal ABM Treaty negotiators. I am prepared any time to debate the advocates of the so-called narrow interpretation. I know they have been ambivalent, because they do not remember. I questioned Secretary Brown the other day at a hearing. He testified in favor of some \$4 billion for SDI and I asked him about the letter. He said he would have to refresh his memory. Memories do get him. We went back to that record and we studied it. Similarly, it is a valuable exercise to review the authoritative testimony of all the negotiators, the Secretary of State, the Chief of Staff, the Secretary of Defense, and even Karpov on the other side.

Mr. President, I want to give my thanks to the distinguished majority leader for providing me this opportunity.

Mr. BYRD. Does the Senator want additional time, 2 or 3 minutes?

Mr. HOLLINGS. That is all right.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD. Mr. President, I yield 10 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized for 10 minutes.

Mr. SARBANES. Will the Senator yield for a unanimous-consent request?

Mr. DODD. I am glad to yield.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I ask unanimous consent that an exchange that took place at the American Society of Newspaper Editors, questions and answers, and an article on that exchange, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

QUESTIONS AND ANSWERS

Q. Mr. President, I'm Joseph Stern from the Baltimore Sun. You described the INF treaty as a "done deal." But when it goes before the Senate, a major question is going to be whether the testimony offered by your administration in 1972, and the whole legislative history of the ABM treaty, is subject to reinterpretation by future administrations. Senator Nunn has described this as a major constitutional question. When your officials were testifying on the ABM treaty, did you ever anticipate that a succeeding administration would try to reinterpret that testimony?

President Nixon. No, I did not. (Pause). (Laughter.) Let me say, I—didn't mean to try to cut you off. I'm simply—I was going to say that there is, here, a constitutional argument, as you know. On the one side, it is said that what a treaty means is what—how it was presented to the Senate. Since the Senate has to advise and consent, a treaty must—it means whatever was presented to the Senate. As far as what was presented to the Senate was concerned, it was what we call the narrow interpretation. There is no question about that. And so Senator Nunn is absolutely correct on that point.

On the other hand, there are those who say—and here is where the counsel, of course as you know, for the State Department, who has taken that line—who say that what a treaty really means is how was it negotiated with the adversary, in this case the Soviet Union. And that in the negotiating with the Soviet Union, the broad interpretation was possible. That was the point.

Now, let me express my own view, though, about how we ought to deal with that and SDI in the future, because I think that would be a followup question that you might have. I don't go along with those that say that what we should do is to go forward with SDI, and just say that we accept the counsel from the State Department's interpretation. Because if you do that, you're going to find that the Senate, particularly with Nunn, a very powerful senator there, is—will then block the funds for it. So that isn't going to work.

What I feel about the SDI thing is that we should first determine what our national security requires. We will then determine, if we want to go forward in SDI, we determine what we have to do. If we believe that is

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within the treaty, we should negotiate that, discuss that, with the Soviets. If they accept our interpretation, we go forward with it. If they do not accept our interpretation, then we have a choice. As you know, the ABM Treaty provides that if supreme national interests are involved, that then you can give six-months' notice and go out of the treaty. And my view is let's start, first, what does the national security require? If it requires SDI, then go forward with it and then see if you can do it within the treaty. If you can't, then break out of the treaty—by "breaking out" I mean give the notice and go forward in that way. That's the only way to do it.

LESSONS IN HONOR FROM RICHARD NIXON

(By Lars Erik Nelson)

WASHINGTON—Richard Nixon came to town last week and promptly solved a problem that has been vexing the White House, the State Department, the Pentagon and the Senate for the last four years. He said the Anti-Ballistic Missile Treaty that he signed with Moscow in 1972 does not allow the development of Star Wars.

There it is, flat and simple. Funny, nobody had the wit to ask him earlier. Instead, the government has torn itself apart over what the treaty does and doesn't mean—in the process, calling into question the value of any U.S. signature on any treaty.

The ABM treaty—as written, signed and ratified—prohibits the development, testing and deployment of any space-based anti-missile system. The Reagan administration, which wants to develop a space-based system, says, however, the treaty doesn't mean what it says or what the Nixon administration said it would.

Reagan's State Department counselor, Abraham Sofaer, says the executive branch has a right to reinterpret treaties in the light of the negotiations that produced them and the other side's behavior after ratification. Sofaer says the treaty in fact allows tests for Reagan's Strategic Defense Initiative.

Sen. Sam Nunn (D-Ga.) calls this "an amazing sort of legalistic gymnastics" and a challenge to the constitutional powers of the Senate. Nunn insists on a "narrow interpretation"—which would bar Star Wars tests—arguing that a treaty can only mean what the Senate ratifies.

When Nixon appeared at the American Society of Newspaper Editors last week in his new role as elder statesman, Joseph Sterne of The Baltimore Sun asked him to resolve the dispute.

"When your officials were testifying on the ABM treaty," Sterne said, "did you ever anticipate that a succeeding administration would try to reinterpret that testimony?"

"No, I did not," Nixon said, and he turned away. Nixon does not like to say anything bad about the Reagan administration. But Nixon also feels a responsibility, at 75, to pass on his experience and his wisdom. He turned back toward Sterne.

"There is, here, a constitutional argument, as you know. On the one side, it is said that what a treaty means is what and how it was presented to the Senate. Since the Senate has to advise and consent, a treaty must mean whatever was presented to the Senate. As far as what was presented to the Senate, it was what we call the narrow interpretation. There is no question about that. And so Sen. Nunn is absolutely correct on that point.

"On the other hand, there are those who say . . . that what a treaty really means is how it was negotiated with the adversary, in this case the Soviet Union, and in negotia-

tion with the Soviet Union, broad interpretation was possible.

"Now let me express my own view: I don't go along with those that say that we should go forward with SDI and . . . accept (Sofaer's) interpretation. Because if you do that, you're going to find that the Senate, particularly with Nunn, a very powerful senator, will then block the funds for it. So that isn't going to work."

This is classic Nixon: Weaseling out of your commitment is wrong—and besides it won't work. Nixon continued:

"What I feel about SDI is that we should first determine what our national security requires. We will then determine—if we want to go forward with SDI—what we have to do. If we believe that is within the treaty, we should negotiate that, discuss that, with the Soviets.

If they accept our interpretation, we go forward with it. If they do not accept our interpretation, then we have a choice. As you know, the ABM treaty provides that if supreme national interests are involved, then you can give six-months' notice and get out of the treaty. . . . That's the only way to do it."

How strange that we have reached a point where we must learn lessons in honor from Richard Nixon—but, at the same time, how encouraging that he, in his retirement, has reached the point where he can persuasively and usefully teach them.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, first of all let me commend the majority leader and others who are involved in making some very creative and thoughtful suggestions to the condition presently concluded that came out of the result of the hearings of the Foreign Relations Committee involving this particular debate. Let me also say and I gather this has already been introduced into the Record, there is a letter from Professor Henkin, of Columbia University, on the very issue of whether or not a condition is applicable to the interpretation of this treaty and as such is binding on this or any later President. President Kennedy once noted scholars in the area of treaty-making under the Constitution suggests it is.

With all due respect to our good and dear friend from South Carolina, Professor Henkin has the expertise and knowledge in that area and would suggest anyway, not that he is without those who would disagree with him, I think it worth noting he draws that conclusion.

Mr. HOLLINGS. Mr. President, will the distinguished Senator yield?

Mr. DODD. I will be glad to yield.

Mr. HOLLINGS. Will we at this time include in the Record for edification of all just exactly what Professor Henkin said in toto? I have a Restatement of the Law of the Foreign Relations Law of the United States and particularly from section 303 right on through, those particular references. Can we include this in the Record at this particular time?

Mr. DODD. Absolutely.

Mr. HOLLINGS. You see he comes down on both sides.

Mr. DODD. Like any good law professor.

Mr. HOLLINGS. Mr. President, I ask unanimous consent to have that material printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

MAY 24, 1988.

Mr. JOHN B. RITCH III,
Deputy Staff Director, Senate Foreign Relations Committee, Washington, DC.

DEAR MR. RITCH: It has come to my attention that I have been quoted as saying that the Senate Foreign Relations Committee Report on the INF Treaty misrepresented my views. I have made no such statement and that is not my view. I did express some concern that, in view of the way my name was used in the Report, a reading—surely a quick reading—of the Report might lead the reader to believe that I was behind the Report's statement of, and attack on, the so-called Sofaer Doctrine and that I favored the addition of the Condition on interpretation.

Let me make my position clear. I discussed the substance of the statement of Constitutional principle with you and others; I agree that what has emerged in that respect is substantively sound. As I said from the beginning, however, I am not in favor of making a statement of Constitutional principle a condition of Senate consent. If the Senate thinks it is necessary or desirable to declare its views of Constitutional principle—which in the present instance I agree are sound—it should put them into a separate Resolution.

The Committee draft in effect combines two resolutions: it combines an understanding, stated as a condition, on the interpretation of the particular INF Treaty (which condition is binding on the President, and on future Presidents) with a statement of general Constitutional principle (which is not binding on anyone). If there is insistence that the reference to Constitutional principle should be included, the text as it appears in the Committee Report is not unsound. The condition is applicable to the interpretation of this Treaty and as such is binding on this and any later President; the statement of Constitutional principle is included only parenthetically in a kind of editorial reference in passing. Perhaps it would be better to make the parenthetical character of the reference to the Constitutional principle even clearer by adding a few words, so that the introductory phrase would read:

That the Treaty shall be subject to the following principles, which, in the judgment of the Senate, derive, as a necessary implication, etc.

All good wishes.

Sincerely,

LOUIS HENKIN.

RESTATEMENT OF THE LAW: THE FOREIGN
RELATIONS LAW OF THE UNITED STATES

§ 303. Authority to Make International Agreements: Law of the United States

Subject to § 302(2),

(1) the President, with the advice and consent of the Senate, may make any international agreement of the United States in the form of a treaty;

(2) the President, with the authorization or approval of Congress, may make an international agreement dealing with any matter that falls within the powers of Congress and of the President under the Constitution;

(3) the President may make an international agreement as authorized by treaty of the United States;

(4) the President, on his own authority, may make an international agreement dealing with any matter that falls within his independent powers under the Constitution.

Comment:

a. United States terminology as to international agreements. United States terminology as to international agreements differs from that employed in the Vienna Convention. See Introductory Note to this Part. The United States Constitution in Article II, Section 2, provides that the President "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur." It is therefore necessary to use a term other than "treaty" to refer to agreements made by other processes. Such agreements are sometimes referred to collectively as "international agreements other than treaties" and specific categories are referred to as "Congressional-Executive agreements" (Subsection (2)), "executive agreements pursuant to treaty" (Subsection (3)), and "sole executive agreements" (Subsection (4)). However, the term "treaty" is not always restricted to the meaning signified in Article II, Section 2. It has been interpreted to include other international agreements in the provisions of the Constitution defining the Judicial Power of the United States (Article III, Section 2) and the Supremacy Clause (Article VI). A reference to a "treaty" in an act of Congress has in certain contexts been construed to include other international agreements.

b. Breadth of treaty power. Subject to constitutional limitations, § 302(2), the treaty power may be used to make international agreements of the United States on any subject. See Comment c and § 302, Comments c and d.

c. Treaties and the legislative powers of Congress. A treaty may deal with a subject that Congress could not regulate by legislation in the absence of treaty. See *Missouri v. Holland*, 252 U.S. 416, 40 S.Ct. 382, 64 L.Ed. 641 (1920); § 302, Comment d. A treaty may also deal with a subject that can be regulated by act of Congress, for example, a tariff, other regulations of foreign commerce, postal service, coinage, war and peace. That treaties and statutes can deal with the same subject is reflected in the rule that when a treaty and a statute are inconsistent the later in time prevails. See § 115. A different question is whether a treaty on a particular subject can be self-executing. While a treaty may properly obligate the United States to pay money or to go to war, action by Congress is required to appropriate the funds or to declare or otherwise authorize war. See § 111, Comment i.

d. Advice and consent of Senate. Under Article II, Section 2 of the Constitution, quoted in Comment a, it is the President who "makes" a treaty by ratifying or acceding to it (§ 312, Comment d), but he may do so only after the Senate consents. Even if a treaty has received the advice and consent of the Senate, the President has discretion whether to make the treaty.

The Senate often has given its consent subject to conditions. Sometimes the Senate consents only on the basis of a particular understanding of the meaning of the treaty, or on condition that the United States obtain a modification of its terms or enter a reservation to it. See § 314. The Senate may also give its consent on conditions that do not require change in the treaty but relate to its domestic application, e.g., that the treaty shall not be self-executing (§ 111(4)); or that agreements or appointments made in implementation of the treaty shall require the Senate's advice and consent.

There is no accepted doctrine indicating limits on the conditions the Senate may

impose. Surely, a condition that has no relation to the treaty would be improper, for example, a requirement that the President dismiss or appoint some cabinet officer. But a condition having plausible relation to the treaty, or to its adoption or implementation, is presumably not improper, and if the President proceeds to make the treaty he is bound by the condition. Compare § 339, Comment a and Reporters' Note 3.

e. Congressional-Executive agreements. Congress may enact legislation that requires, or fairly implies, the need for an agreement to execute the legislation. Congress may authorize the President to negotiate and conclude an agreement, or to bring into force an agreement already negotiated, and may require the President to enter reservations. See, e.g., § 468, Reporters' Note 6. Congress may also approve an agreement already concluded by the President. Congress cannot itself conclude such an agreement; it can be concluded only by the President, who alone possesses the constitutional power to negotiate with other governments.

Since any agreement concluded as a Congressional-Executive agreement could also be concluded by treaty (see Subsection (1) and Comment b), either method may be used in many cases. The prevailing view is that the Congressional-Executive agreement can be used as an alternative to the treaty method in every instance. Which procedure should be used is a political judgment, made in the first instance by the President, subject to the possibility that the Senate might refuse to consider a joint resolution of Congress to approve an agreement, insisting that the President submit the agreement as a treaty.

Constitutional limitations applicable to treaties apply also to Congressional-Executive agreements. See § 302.

f. Agreements pursuant to treaty. An executive agreement may be made by the President pursuant to a treaty, Subsection (3), when the executive agreement can fairly be seen as implementing the treaty, especially if the treaty contemplated implementation by international agreement. Such an executive agreement has the same effect and validity as the treaty itself, and is subject to the same constitutional limitations as the treaty. See § 302.

g. President's authority to make sole executive agreements. The Constitution designates the President as commander in chief, and gives him power to make treaties and appoint ambassadors (Article II, Section 2); it provides that he "shall receive Ambassadors" and "take Care that the Laws be faithfully executed" (Article II, Section 3). There is some authority for the view that the Executive Power clause (Article II, Section 1) is itself a grant of power and vests in the President all "executive power," notably the conduct of foreign relations. See 7 A. Hamilton, Works 76, 81 (Hamilton ed. 1851) ("Pacifcus" letter). These various sources of authority support power for the President to conclude some international agreements. It is established that the President can make agreements incidental to recognizing foreign states or governments. He can also make agreements as commander in chief during declared wars, including armistice agreements. Presidents have asserted a broad authority to make many other international agreements, at least in the absence of inconsistent legislation or of Congressional action restricting such agreements. See Comments h and i. The great majority of sole executive agreements are of a routine character.

h. Limitations on subject matter of sole executive agreements. Sole executive agreements are subject to the constitutional limitations applicable to treaties and other

international agreements. To the extent that the President's constitutional authority overlaps powers of Congress (see § 1, Reporters' Note 3), he may make sole executive agreements on matters that Congress may regulate by legislation. As to whether the President can make an agreement inconsistent with an act of Congress, and whether Congress can legislate to curtail such agreements, see Comments i and j.

i. Congressional restrictions on sole executive agreements. Congress has not enacted restrictions on sole executive agreements generally, but some statutory restrictions on Presidential authority would forbid some sole executive agreements. For example, the War Powers Resolution of 1973, 50 U.S.C. § 1541-48, inhibits the President from making agreements that commit the United States to introduce armed forces into hostilities or into situations where involvement in hostilities is likely, or to increase or redeploy United States combat forces abroad. See also the Arms Control and Disarmament Act, Reporters' Note 8. The validity of such restrictions on Presidential powers, and of attempts to control and limit sole executive agreements generally, has not been authoritatively determined and may differ according to the character of the restriction and the circumstances of its application.

j. Sole executive agreements as law of the land. Sole executive agreements within the President's constitutional authority are law of the United States and supreme over State law. Like treaties and other international agreements, they can be superseded as domestic law by later international agreements or by acts of Congress within its constitutional authority. Their status in relation to earlier Congressional legislation has not been authoritatively determined. See § 111, Comment d and Reporters' Note 2; § 115, Comment d and Reporters' Note 5.

REPORTERS' NOTES

1. Use of term "treaty" in domestic law. For cases in which a reference to "treaty" has been construed to include other international agreements, see *B. Altman & Co. v. United States*, 224 U.S. 583, 32 S.Ct. 593, 56 L.Ed. 894 (1912) (executive agreement is "treaty" under statute conferring appellate jurisdiction); *Weinberger v. Rossi*, 456 U.S. 25, 102 S.Ct. 1510, 71 L.Ed.2d 715 (1982) (under statute forbidding employment discrimination except where permitted by "treaty," "treaty" includes executive agreement). See § 111, Reporters' Notes 2 and 4.

2. Treaties and legislative powers of Congress. In *Edwards v. Carter*, 580 F.2d 1055 (D.C.Cir. 1978), *certiorari denied*, 436 U.S. 907, 98 S.Ct. 2240, 56 L.Ed.2d 406 (1978), the court, affirming the general principle that treaties may deal with matters within the legislative power of Congress, held that a treaty may dispose of property of the United States in the Panama Canal Zone, although Article IV, Section 3, clause 2, of the Constitution provides that "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . ." (That the treaty in fact disposed of property belonging to the United States was assumed without discussion.) Compare § 111(4) and Comment i and Reporters' Note 6 to that section.

3. Senate advice and consent. There is confusion about terminology in United States treaty practice. Properly speaking, the Senate does not ratify a treaty; the Senate gives its consent to ratification. The President makes, ratifies, or accedes to a treaty on behalf of the United States. The Senate cannot amend a treaty or enter res-

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ervations to it. It can, however, give its consent to a treaty on condition that it be modified, or, in the case of a multilateral agreement, that the United States enter one or more reservations. The President need not fulfill those conditions, but he cannot proceed to make the treaty unless they are met, whether they concern the terms of the treaty or its implementation in the United States.

The President may decline to make the treaty after the Senate has approved it. Comment *d*. Sometimes there has been a substantial delay between consent by the Senate and ratification. The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997, 330 U.N.T.S. 38, received Senate consent in 1968 but the United States did not accede to it until 1970, following enactment of implementing legislation. See § 487. Reservations proposed by the Senate or other conditions attached to its consent may move the President not to adhere to the treaty. For example, President Taft declined to ratify the arbitration treaties of 1911 with France and Great Britain after the Senate demanded unwelcome reservations. Fleming, *The United States and the World Court* 21 (1945); 4 Wiktor ed., *Unperfected Treaties of the United States of America, 1776-1976*, at 217-18, 225-26 (1979). See also § 314.

The Constitution gives the President power to make treaties "by and with the Advice and Consent of the Senate," but Senate advice, as distinguished from consent, is not necessary. Presidents since the early years of the nation's history generally have refrained from formally consulting the Senate prior to negotiating a treaty. However, there has been a practice of notification and exchange of information and views with Senate committees or selected members of the Senate, and sometimes with committees or selected members of the House of Representatives, especially where legislative implementation might be necessary, or where approval as a Congressional-Executive agreement was contemplated. Infrequently, the Senate has given formal advice. Compare the resolution of both Houses which approved the Interim Strategic Arms Limitation Agreement and "urge[d]" the President to seek further talks and to work towards further reduction in armaments. 86 Stat. 746-47 (1972). For other resolutions of that character, see *Treaties and Other International Agreements: The Role of the United States Senate*, S.Rep.No. 205, 98th Cong., 2d sess. at 92-93 (1984).

4. *Senate conditions of domestic import.* A condition imposed by the Senate that does not seek to modify the treaty and is solely of domestic import, is not part of the treaty and hence does not partake of its character as "supreme Law of the Land." See § 11(1) and Comment *d*. It was once assumed, therefore, that a Senate proviso that a treaty shall not take effect for the United States until Congress adopts implementing legislation could not have the force of law necessary to prevent the agreement from automatically taking effect as law in the United States. See *Power Authority of New York v. Federal Power Commission*, 247 F.2d 538 (D.C.Cir. 1957), *vacated and remanded with instructions to dismiss as moot*, 355 U.S. 64, 78 S.Ct. 141, 2 L.Ed.2d 107 (1957). The effectiveness of such a Senate provision, however, does not depend on its becoming law of the land as part of the treaty. Such a proviso is an expression of the Senate's constitutional authority to grant or withhold consent to a treaty, which includes authority to grant consent subject to a condition. The authority to impose the condition implies that it must be given

effect in the constitutional system. See Henkin, "The Treaty Makers and the Law Makers: The Niagara Power Reservation," 56 Colum.L.Rev. 1151 (1956).

The Senate has not made a practice of attaching conditions unrelated to the treaty before it. If the Senate were to do so, or were to attach a condition invading the President's constitutional powers—for example, his power of appointment—the condition would be ineffective. The President would then have to decide whether he could assume that the Senate would have given its consent without the condition.

5. *United States treaties with Indian tribes.* Until the practice was terminated by the Act of Congress of March 3, 1871 (25 U.S.C. § 71), agreements by the United States with American Indian tribes usually were called "treaties," were concluded as treaties with the advice and consent of the Senate, and were treated by the courts like other treaties in principle, although sometimes with greater flexibility in fact. See *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 582, 8 L.Ed. 483 (1832) (treaties with Indians "should never be construed to their prejudice"); *United States v. Shoshone Tribe*, 304 U.S. 111, 116, 58 S.Ct. 794, 797, 82 L.Ed. 1213 (1938) (Indian treaties to be construed "in the sense in which naturally the Indians would understand them"); cf. *Squire v. Capomann*, 351 U.S. 1, 6-7, 76 S.Ct. 611, 614-615, 100 L.Ed. 883 (1956). The Act of 1871 preserved the obligation of prior treaties, and cases involving pre-1871 Indian treaties continue to arise. The courts have applied to them the principles applicable to treaties with foreign states, e.g., that subsequent legislation will be construed so as to avoid abrogating a prior treaty. *Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 690, 99 S.Ct. 3055, 3076, 61 L.Ed.2d 823 (1979), *modified*, 444 U.S. 816, 100 S.Ct. 34, 62 L.Ed.2d 24 (1979). See § 114.

6. *Executive agreement pursuant to treaty.* An executive agreement defining jurisdiction over United States forces in Japan, concluded pursuant to treaty, was given effect in *Wilson v. Girard*, 354 U.S. 524, 77 S.Ct. 1409, 1 L.Ed.2d 1544 (1957).

7. *Constitutional basis of Congressional-Executive agreements.* Although the Constitution speaks only of the power of the President to make treaties and prescribes a special procedure for making them, it is long established that the United States may make international agreements other than treaties, and do so by other procedures. *B. Altman & Co. v. United States, Reporters' Note 1*; see also *United States v. Belmont*, 301 U.S. 324, 57 S.Ct. 758, 81 L.Ed. 1134 (1937) cited in § 111, *Reporters' Note 2*.

In principle, a Congressional-Executive agreement must be within the powers of the President and Congress. As stated in Subsection (2), such an agreement can be made on any subject within the legislative powers of Congress or within the President's own constitutional authority. It has been suggested that the authority to make a Congressional-executive agreement may be broader than the sum of the respective powers of Congress and the President; that in international matters the President and Congress together have all the powers of the United States inherent in its sovereignty and nationhood, and they can therefore make any international agreement on any subject. See § 302, Comment *a*. Issues of delegation of authority are not involved. Cf. *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 57 S.Ct. 216, 81 L.Ed. 255 (1936).

On numerous occasions, Presidents have made certain kinds of agreements, such as claims settlements, on their own authority,

and Congress has not objected. The Supreme Court upheld such agreements, though it is not clear whether it did so on the ground that such agreements had been authorized by Congress by implication, under the principle of Subsection (2), or because such agreements are within the President's sole authority, Subsection (4), such authority having been confirmed by a history of Congressional acquiescence. Compare *Dames & Moore v. Regan*, 453 U.S. 654, 101 S.Ct. 2972, 69 L.Ed.2d 918 (1981).

8. *Congressional-Executive agreement as alternative to treaty.* At one time it was argued that some agreements can be made only as treaties, by the procedure designated in the Constitution. See, for example, Borchard, "Shall the Executive Agreement Replace the Treaty?" 53 Yale L.J. 664 (1944); Borchard, "Treaties and Executive Agreements—A Reply," 54 Yale L.J. 616 (1945). Scholarly opinion has rejected that view. McDougal and Lans, "Treaties and Congressional-Executive or Presidential Agreements: Interchangeable Instruments of National Policy," 54 Yale L.J. 181, 534 (1945); Henkin, *Foreign Affairs and the Constitution* 173-76 (1972); see also 40 Op.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. SPECTER. Mr. President, will the Senator yield?

Mr. DODD. If I may proceed with my remarks, then I will be glad to yield. I would like to make a general comment on the position we are in today. But I will come back and I will be glad to yield at that particular moment.

Mr. President, as one of the authors of the condition the Foreign Relations Committee attached to the resolution of ratification on treaty interpretation, I rise to speak for retaining that condition with the modifications suggested by the distinguished majority leader, whom I compliment for his creative suggestions. I compliment those who are responsible for the modifications that have been made.

Ever since the committee markup, this condition has been under attack by its opponents in floor statements, in at least three Dear Colleague letters that I am aware of, and in statements in the media. What is astonishing to me in these attacks is the fact that I have not seen one single opposing statement that correctly represented of what that condition means. In other words, this one-sided debate is conducted on distortions and misrepresentations of the content and effect of this condition. What I would like to do at this point is to describe in the simplest possible language the exact content and effect of this condition and have its declared opponents take on the real thing instead of strawmen and red herrings raised, it seems to me, over the last several weeks that this issue has been in debate.

What this condition does is very simple. It reinforces what is already clear from the constitution; that is, that the Senate shares with the President the constitutional power to make treaties and that the Senate has to be accorded a full understanding of what exactly a treaty means, what obliga-

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tions it imposes, at the time the Senate is asked to give its advice and consent. This means assuring that the Executive and the Senate has identical understanding of the meaning and the legal effect of the text of the treaty at that time, and that subsequently the Executive does not have the right to unilaterally change the content of that understanding. That is all this condition does, it reiterates what is undisputably clear from the Constitution itself given its solid constitutional foundation, there should be no need for this condition; unfortunately, these clear constitutional principles were called into question recently by the administration and, specifically, the State Department legal advisor, so the need arose to reinforce them. This is not an attack on the Constitution. This is a defense of the Senate's constitutional powers.

Let me simplify this even further by reviewing the ratification process in the Senate.

The President, as we all know signs a treaty that he negotiated through his emissaries and submits it to the Senate. At this point, Senators usually have only a scant idea of what the treaty contains. Senators were not parties to the negotiations. A few of them may have been consulted. Most of them certainly were not. The Senate had little or no input onto the negotiations. The President, up to this particular point was free to shape the treaty according to his own priorities subject, of course, to the consent of the other contracting party.

The executive-Senate interchange in the ratification process is twofold. The executive presents the text of the treaty with its annexes, if any, and then proceeds to explain it to the Senate. Through the experts of the administration, it explains the meaning of the words of the treaty, wherever any ambiguity may exist, and explains the effect of those words and provisions under international law, again, the President retains a substantial control over this process. The treaty is his product, he knows how it was written, what exactly was agreed to, and he is free to give any kind of explanation he deems to be appropriate, up to this particular point, the Senate is merely an audience, a very active audience to be sure, asking questions, following up, conducting its own investigation, still, the material presented, text plus explanations, is substantially under the control up to this particular point of the executive branch.

It is evident from the advice and consent provision of the Constitution, that the purpose of this process is to provide the Senate a full understanding of the content and effect of the treaty before the Senate consents to its ratification. Without such an understanding, shared with the executive, the advice and consent function would be a largely pointless exercise it does not require a great leap of logic.

In fact, it is also self-evident that once the Senate consented to ratification of the treaty. As presented by the executive, the executive has no unilateral right to change the content of that understanding without the agreement of the Senate it cannot come back and say to the Senate that "you may think you agreed to version a of the treaty, but now I decided that you really agreed to version b". This is the essence of this dispute, our condition is the simple reiteration of the fact that the constitutional advice and consent power does not allow for such chicanery.

Instead of arguing with this fundamental and commonsense principle, critics of the condition stay on the level of generalities about "power-grabbing", "artificial constitutional confrontation", "partisan dispute" and the like. This will not do. I challenge every opponent of this condition to come down from the level of generalities and focus on the essence. To oppose this condition, you have to tell the Senate, that contrary to the position taken by the Foreign Relations Committee, the President does have the right to unilaterally change the content of the understanding that was the basis of the Senate's advice and consent. If you do not believe this, you ought to support the condition because all it does is to reiterate the substance and the integrity of the Senate's treaty power.

The opponents' position carries at least one of two implications. Either the executive has to be allowed to deceive the Senate—or the executive is so incompetent that it has to be allowed liberal opportunity to unilaterally change its understanding of the treaty that it authored. I find both of these premises unacceptable.

As for the charge that this condition will make thousands of pages of administration testimony binding without regard to the importance or relevance of the particular reference or the rank of the witness in question, this objection is simply groundless. I carefully reviewed the objections of the administration as presented, for instance, in the letter of White House Counsel Arthur Culvahouse to Senator LUGAR, dated March 17 of this year.

The PRESIDING OFFICER (Mr. BREAU). The time of the Senator from Connecticut has expired.

Mr. DODD. Mr. President, I request of the opponents if I may have a couple of more minutes, and then I would be glad to respond to some questions. I request 2 minutes from the opponents of the condition.

Mr. BYRD. Mr. President, is the Senator supporting the Byrd amendment?

Mr. DODD. I am supporting the Byrd amendment.

Mr. BYRD. I yield the Senator 2 minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. DODD. I thank the majority leader. I am sorry the majority leader did not understand exactly where I was coming out on this.

In my review of the letter dated March 17 of this year, it is my conviction that, while our Constitution anticipates conflict and struggle between branches of our Government, it works best when those conflicts and struggles are tempered by civility and accommodation. In this spirit I suggested two modifications to the draft to allay the concerns of the White House. One modification reasserted the self-evident rule that the primary source of treaty interpretation is the text itself. The other made clear that of thousands of pages of Executive testimony only those parts are considered binding where authorized witnesses of the executive directly analyze specific parts of the text as for their meaning and legal effect. This reduces those ominous "thousands of pages" to a few dozen pages at most in my estimate. I call my colleagues' attention to what must have been obvious to any observer of these hearings. Even high-ranking administration witnesses showed enormous caution when addressing the interpretation of specific treaty language. I have seen Secretary Shultz turning to the negotiators or his other experts repeatedly on such questions. When I queried Ambassador Glitman, whose knowledge of the field of arms control is nothing less than encyclopedic, on a specific question of international law, he answered me only upon consulting his expert on international law sitting behind him. The implication by the opponents of this condition, that there are somehow hundreds or thousands of loose and careless assertions by executive witnesses spread over the record and this condition will make all of them binding is nonsense.

While this dispute originated in the ABM Treaty controversy, this condition avoids trying to solve that controversy using the ratification procedure of this treaty. One can vote for this amendment and still support the broad interpretation of the ABM Treaty because that debate is mostly over facts, and this condition is over constitutional principles. You ought to vote against this proposal only if you believe that under the Constitution the Executive can bring a treaty here, give you an authoritative explanation directed to the meaning of its text, and then, after the treaty is ratified, to return and state that that was not really what the text meant, it meant something else.

Let me finally dispose of a red herring. The March 17 letter of White House counsel raises the possibility that this condition would increase the risk of a treaty having one meaning

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domestically and a different meaning under international law.

First of all, this objection is curious from a White House that is trying hard to give a crucial provision of the ABM Treaty a domestic meaning that is very different from the meaning shared with the Soviets under international law.

Second, while the possibility for dual effect always exists in theory, the modification I suggested, restricting the binding effect of executive presentations to those parts that speak directly to the text of the treaty minimizes this danger.

Third, disputes over the interpretation of an international agreement almost never occur this way, that is, by an attempt to reverse the very meaning of a treaty provision authoritatively given at the time of ratification.

Interpretation disputes typically arise in two ways. One is a legal gap. The treaty was supposed to have covered a given set of circumstances, but by a drafting error or oversight it does not. There is no treaty text covering the case, there can be no shared understanding between the Executive and the Senate, and the President is free to enter the dispute with our treaty partner to try to work out the issue under the rules of international law. The second type of dispute arises from changed circumstances, new facts not foreseen and provided for at the time of writing the treaty. The result is the same, no shared understanding could exist with the Senate and the President has a free hand to negotiate a solution with our treaty partner.

I gave these examples to illustrate to my colleagues not how much but how little this finding and condition will bind the President. With a little simplification, what it says is that the Executive has no right either to mislead the Senate, or unilaterally change what was mutually agreed to under the Constitution. In closing, let me just point out that this is a fundamental general principle under any system of law, domestic or international.

I strongly urge the support of the Byrd compromise proposal that is before us. It would, I believe, tremendously enhance this particular document and clarify what is an extremely important point. There is nothing trivial about this debate at all.

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time?

Mr. SPECTER. Mr. President, at last report, I had 23 minutes remaining. I would like to ask if that is so?

The PRESIDING OFFICER. The Senator is correct.

Mr. SPECTER. Mr. President, on my time, I would ask a question of the distinguished Senator from Connecticut, but there is not time enough under this arrangement to debate anything. I wanted to have an exchange with the distinguished Senator from Michi-

gan, but since there is not time to debate it, I simply want to state for the record this point. According to my copy of Professor Henkin's letter, he says:

I am not in favor of making a statement of constitutional principle a condition of Senate consent.

So I do not believe that Professor Henkin favors that, as represented by the distinguished Senator from Connecticut.

But I will add this, Mr. President: Professor Henkin's letter is sufficiently complicated so it requires a lot of analysis, more than the few moments I have had today, and it requires some debate, as well.

I yield the floor. I ask how much time I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 22 minutes remaining.

Mr. SPECTER. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. WILSON. Mr. President, I yield 5 minutes to the Senator from Delaware [Mr. ROTH].

The PRESIDING OFFICER. The Senator from Delaware is recognized for 5 minutes.

CONDITIONAL CONSENT

Mr. ROTH. Mr. President, it is well established that in considering a treaty the Senate may grant its consent, may refuse its consent, or may condition its consent. The Senate's power to attach conditions is grounded in the customs of this body and recognized in the opinions of the Supreme Court.

Although the Senate's power to attach conditions is clear, the legal effect of exercising that power appears to be cloudy. In my opinion, the confusion about conditions arises from a failure to make a fundamental distinction between making law and making a political bargain.

How we make law is stated in the Constitution. The Senate participates in three kinds of lawmaking: In writing amendments to the Constitution, in writing legislation, and in consenting to treaties. These are the only ways for the Senate to make binding law under the Constitution.

Is the pending amendment to the resolution binding law? No it is not. Clearly, it is not part of a constitutional amendment or statute. Nor is it part of a treaty. Therefore, the condition is not binding law. If it is not binding, then no one is bound—either the Soviets or the President.

Of course, making a law is not the only way to prompt someone to act. Bargaining is a widely accepted technique. The mother who promises to take her son swimming if he cleans up his room or the Senator who promises a favor in return for a favor is not making law. Just a bargain.

People respond to bargaining because they want something and not because they wish to avoid violating a law. Suppose that the Senate consented to the INF Treaty on condition

that the treaty not take effect until the President removed the Secretary of State. That condition in itself would not have the force of law. The President would not be legally bound to remove the Secretary of State. But he would have to politically if he wanted the Senate's consent to the treaty. The Senate's posture may be viewed as a refusal to consent outright but an offer to consent on other terms. In effect, the Senate is exacting a price for its consent.

Normally, bargaining works better when the price exacted is paid up front. But suppose the Senate granted its consent this month on condition that the President would remove the Secretary of State at some later time, say, by the end of July. Suppose further that the condition is not met. On August 1 do we have a treaty or not?

In my opinion, the answer is yes. The condition is not law. The Senate made a bad deal insofar as it gave its consent but is left to hope that the President complies. The condition is not part of the treaty. The signatories therefore remain obligated.

The pending amendment is a condition much like the above example. It seeks to impose on the President and the Supreme Court certain rules for interpreting the treaty, which must temporally relate to postratification events. While it makes clear its purpose not to impact upon the obligations assumed by the signatories under the treaty, it seeks nonetheless to claim that it is binding domestically. I do not believe that it is possible for a condition to be nonbinding internationally while at the same time it is binding domestically.

A condition is either binding or it is not. For a condition to be legally binding it must be part of a treaty, statute, or constitutional amendment. The pending amendment is none of those. Therefore, it is not binding. If it is not binding, it is not binding internationally or domestically.

Once the Senate consents, where does the condition get its authority to bind? The Senate can prompt action by withholding or threatening to withhold its consent and making a bargain. But there is hardly any leverage here. Once the Senate consents and there are no conditions contained in the treaty papers, the executive branch has what it wants and the President, particularly succeeding Presidents, are free to ignore bargains that are not part of the treaty.

Proponents of the condition may argue that the condition is binding on the President because he accepts the condition when he signs the protocol of ratification. But the condition is not part of the papers he signs. Moreover, even if it were part of the papers, it makes no difference. Remember that the President signed the Gramm-Rudman-Hollings law; yet was able to challenge one of that law's provisions that affected his authority to with-

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hold spending. The Supreme Court struck down that provision and, in effect, said it was not legally binding on the President. The fact that the President accepted the invalid provision by actually signing the legislation was not said to transform a nonbinding provision into a binding one. Therefore, in my opinion, the President could not be deemed to accept the reported condition either in fact or in law.

If the law were otherwise, if the President were held to accept the reported condition, we would be presented with the incongruous situation that the condition binds the President but not the Supreme Court. The Supreme Court is part of the "United States" referred to in the text of the condition, and it also from time to time interprets treaties. But as far as I know, they are not part of the bargain. Therefore, within the context of this argument, the Supreme Court would not be bound while the President is, even though the condition embraces them both. This cannot be.

What we have here is a condition that is not binding at all, neither internationally nor domestically. In my opinion, the notion of splitting Senate consent and placing it on two tracks—one for the Soviets and another for the President—is novel, confusing, and mischievous.

Proponents who argue that the condition has legal significance may inadvertently be creating a basis for the Soviets to claim, at some future date, that the treaty is no longer binding on them. For they could argue at some future time when the President interprets the treaty that the condition has been violated, that as a consequence the Senate's conditional consent is no longer operative, that the United States is not bound to treaty obligations for which there is no Senate consent, and that therefore the Soviets themselves are no longer bound.

If the Soviets fail to grasp the notion of split consent, with a condition that binds the United States but not the Soviets, I cannot blame them. If they take the position that a condition is either binding or it is not, and if proponents and opponents of the condition take the view it is binding, as many do, then we have a problem here. If the Soviets someday need an argument to cover possible violation or abrogation of the treaty, this condition provides a lot better pretext than the Soviets have needed on other occasions.

I do not believe their argument would be valid. Nor do I believe that anyone here or in the administration wishes to give them such a pretext. But that is not the point. It is not wise to provide such an opportunity.

In opposing this condition on jurisprudential grounds, I hope no one misunderstands my point. I do not have any difficulty with conditions that seek to perfect the treaty or which otherwise prepare us for the signing of

the protocol of ratification. Such conditions are consistent with the constitutional role of the Senate. Rather my problem is with conditions that are not part of the treaty papers and which are to take independent effect after consent is given and after the treaty is formally ratified by the signatories. In my opinion, such conditions have only the force of sense-of-the-Senate resolutions.

If that is true, it might be asked why I will not support it. The reason is that the condition itself—apart from the merits of the vexing question it addresses—may be a source of mischief insofar as it grants the Soviets a pretext for shirking its treaty obligation.

The question of how a treaty may be interpreted is certainly worthy of Senate consideration. But if the Senate's purpose is to set out a blueprint which the executive must follow, this should be accomplished by binding law—by enacting a statute.

If it would be considering inconvenient to bring the House into the picture, then I might suggest that the Senate and the President negotiate the terms of an executive order. Since the Senate and the President agree that interpreting treaties is an executive function, an executive order would be appropriate. Of course, it would not have the permanence or status of a statute.

Mr. President, I recognize that there is very little law on the legal status of conditions that are not part of the treaty papers. In this body, there may well be 100 views on the subject. It is with some humility that I undertake to state my thoughts, in view of the respect I have for the Senators and legal thinkers who may disagree.

I rise to speak because I believe that the Constitution speaks plainly regarding our authority. There are but three ways to make law. This condition is not any one of them.

The PRESIDING OFFICER. Who yields time? Who yields time under the time agreement?

The Senator from California.

Mr. WILSON. Mr. President, I would ask unanimous consent that a call of the quorum be undertaken without that being charged to either side.

Mr. BYRD. I would object to that.

The PRESIDING OFFICER. Objection is heard.

Who yields time?

Mr. BYRD. I would be happy to charge it equally to all sides if the Senator would wish. Against all sides?

Mr. SPECTER. Mr. President, rather than let the time lapse, there is substantial time this Senator would need, but I am reluctant to use my time at this point. I spoke with the Senator from Georgia, Mr. NUNN, who said he expected to be on the floor between 4:15 and 4:30, but rather than let the time go to waste, if it will not go against my 22 minutes, I will seek the use of the time.

Not a bad alternative to having it under the quorum call.

The PRESIDING OFFICER. Who yields time under the agreement? The time allocated—the Senator from Pennsylvania has 22 minutes remaining. Do you seek to use the time?

The Senator from California.

Mr. WILSON. Mr. President, I would inquire how much time remains to all parties?

The PRESIDING OFFICER. The Senator from Pennsylvania has 22 minutes remaining. The Senator from California has 16 minutes remaining. The majority leader has 28 minutes remaining. That is all the remaining time.

Mr. WILSON. Mr. President, owing to the earlier generosity of the majority leader, I believe I have 10 minutes personally?

The PRESIDING OFFICER. The Chair will state to the Senator from California that he has 6 minutes of his original time allocated to him, plus 10 minutes from the majority leader for a total of 16 minutes.

The Chair will state to the Senator that if no one yields time, time will be allocated and charged equally to those Members who have time allocated to them.

Mr. SPECTER. Well, Mr. President, rather than sit here and do nothing.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I would direct a question to the majority leader on my time.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. But not the answer.

I would ask the distinguished majority leader, as the sponsor of this condition, whether he agrees with the statement of Senator NUNN on hearings before the Armed Services Committee earlier this year, 1988, page 28 of the record where Senator NUNN says:

I want to make it clear that if the Soviet Union disagrees with the reading of the treaty being presented in these hearings by our executive branch witnesses, then the time for the Soviet Union to speak out is now, not after the Senate gives approval and not several years down the line.

If the Soviets remain silent on points of interpretation presented by the executive branch witnesses then I believe the U.S. Senate as well as our Government can reasonably believe and contend that silence connotes assent to those interpretations. That is my own view.

How much time do I have left, Mr. President?

The PRESIDING OFFICER. The Senator from Pennsylvania has 20 minutes remaining.

Mr. SPECTER. I would ask the distinguished majority leader, on the interpretation of the Byrd condition, if the distinguished majority leader agrees with Senator NUNN's interpretation of the law on treaty interpretation?

Mr. BYRD. Mr. President, I do not answer on my time.

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Shall I respond on the Senator's time?

The PRESIDING OFFICER. The Senator from Pennsylvania still has the floor.

Mr. SPECTER. No, I do not yield time for purpose of a response.

The PRESIDING OFFICER. The Senator from Pennsylvania yields the floor?

Mr. SPECTER. I do.

The PRESIDING OFFICER. The Senator from Pennsylvania yields the floor.

Who yields time?

Mr. WILSON. I yield 5 minutes to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina, Senator THURMOND, is recognized for 5 minutes.

Mr. THURMOND. Mr. President, I rise in opposition to the amendment offered by the distinguished majority leader. I recognize and congratulate both the majority leader and the Republican leader for the considerable effort that has gone into the formulation of this amendment to accommodate concerns that had been expressed about the earlier Biden-Pell amendment.

Nonetheless, Mr. President, I continue to hold to the belief, that I expressed the other day on the floor, that any amendment along these lines is unnecessary. The assurances provided by the administration with respect to these issues are both appropriate and adequate in my view.

Mr. President, I am concerned about several implications of the amendment that is now before the Senate.

My first concern is how we deal in the future with contradictions that may become apparent in the testimony of authoritative witnesses. During the course of committee deliberations on the treaty, one such potential contradiction did arise, but was subsequently resolved. However, the record is very long, and has only been scrutinized for consistency for those issues that were of particular interest during the committee reviews, such as the future systems issue.

My second concern, Mr. President, is with the lack of status afforded by the amendment to the negotiating record. It is my understanding that the negotiating record was a critical contributor to our understanding of several issues that arose during committee review of the treaty, including the double negative issue that was taken up several days ago.

Finally, and most importantly, Mr. President, I am concerned that the amendment as drafted puts the United States in the position of being held in accordance with United States law to an interpretation to which the Soviet side would not be held. Such a unilateral treaty obligation seems to this Senator to put us in exactly the same situation that was debated on the floor of the Senate for several months

last summer in conjunction with the ABM Treaty.

Mr. President, this amendment is at best unnecessary, and at worst, raises the potential for future concerns that may jeopardize the best interests of the United States.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator yields the floor. Who yields time?

The Senator from California.

Mr. WILSON. Mr. President, I would inquire of my distinguished colleague from Pennsylvania whether he is ready to take the floor at this point?

Mr. SPECTER. Mr. President, rather than allow the time to be unused, may I ask again if my time remains. Is it 20 minutes at this point?

The PRESIDING OFFICER. The Senator from Pennsylvania has 19 minutes remaining.

Mr. SPECTER. Mr. President, as I said earlier, there are a series of questions that I had intended to propound to both Senator NUNN and Senator BYRD. I am going to propound the questions at this time because I believe they are important questions.

I cannot yield my time because I have so little left. I think this illustrates the lack of wisdom of having this kind of a time agreement. I have asked the minority leader, the distinguished Senator from Kansas, Senator DOLE; the request has been relayed to the distinguished majority leader, Senator BYRD, for extra time so that we can have response here, and I hope we would have some extra time.

My questions for the sponsor of this amendment, the distinguished Senator from West Virginia, on the Byrd condition, is whether Senator BYRD—first, I already asked him the question about whether he agrees with Senator NUNN's interpretation that the Soviets are bound by what goes on in the United States ratification process.

I next ask Senator BYRD whether he agrees with the three conditions of the so-called Sofaer doctrine on reaching an understanding of the Senate generally understood and clearly intended and relied upon by the Senate, which has been agreed upon by Senator NUNN in testimony, and whether or not the proponents of the Byrd condition agree with the committee report that the negotiating record is immaterial, where it disagrees with the understanding of the Senate.

I submit those are three important questions which ought to be answered, and I would like to have the time to yield, but I simply do not. Can I inquire how much time of mine is remaining?

The PRESIDING OFFICER. The Senator from Pennsylvania has 17 minutes remaining.

Mr. SPECTER. I thank the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania yields the floor. Who yields time? The Chair will state again that no one yields time, so the time will be charged proportion-

ately to the Members who control time.

Mr. SPECTER. Mr. President, I ask unanimous consent that I may use the time without having it charged as my time until someone seeks the floor.

Mr. KERRY. Objection.

The PRESIDING OFFICER. An objection is heard.

Mr. WILSON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Mr. President, there seems to be a little game called freezing the puck underway here. I will yield myself such time as I require.

The PRESIDING OFFICER. The Senator is recognized.

Mr. WILSON. Mr. President, the Byrd substitute to the Biden-Pell amendment has no place on the INF resolution of ratification. It is not necessary. Indeed, it imperils some votes for the treaty from Members who have expressed publicly their desire to vote for it, their intention to vote for it.

Some have expressed such concern about the lack of wisdom of this condition, that it may be decisive in changing their votes, so some of my colleagues have related to me. It may very well be unconstitutional as a limitation upon executive authority.

It is certainly counter to international law. Professor Henkin, who has been much referred to today, has, as the distinguished Senator from South Carolina put it, come down on both sides.

This debate is really about Senate prerogatives and Senate ability to do its job, Senate duties. Those who are pushing the Byrd substitute to the Biden-Pell amendment have expressed a concern for Senate prerogatives. Well they might, but the great irony of their effort is that they are undermining the ability of the Senate to actually perform its responsibility, to do its duty, to examine the record, all of the record and not simply authoritative representations.

The great irony, Mr. President, is that those who are pursuing this amendment, this condition, are in this instance prepared to detail wholesale the representations, authoritative representations of the executive.

My colleague from California has so indicated. So has my colleague from Michigan. They have said we do not hold the documents; it is not our responsibility to look at the negotiating record. They agree that we are not precluded from this condition from doing so. That is a question in itself, but, my god, we should not be satisfied with not being precluded. We ought to prescribe unto ourselves a duty to compare for consistency and for accuracy the negotiating record of what actually happened in Geneva as between the negotiators on our side and the Soviet side and what is being presented here.

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The great irony is that this morning in the omnibus amendment, to which there were no dissenting votes, there was no opportunity, without resort to the negotiating record, for the very points that were included in that condition attached to this resolution of ratification to have ever been discovered.

So there is more than a little irony in arguing about Senate prerogatives and ignoring the Senate's responsibility to do its job.

I had been assured last night in the negotiations, to which the majority leader referred and to which we have referred here today, that this Byrd substitute for the Biden-Pell condition does not settle the ABM interpretation dispute. That is quite true. It does not. It leaves it unsettled.

It is also true that, as they have said, it does not preclude resort to the negotiating record. At least that is not their intention. However, perhaps the most dangerous thing about this, already hit upon by other speakers, is that by implication, it prescribes the basis for both international as well as domestic obligations.

It is for that reason that it should, in fact, go further than it does and describe a duty explicitly that we make consistent not only the testimony of administration witnesses with the record of what the negotiators did in Geneva, but we must do so so there will be consistency between domestic law and international obligations of the United States under this treaty whereas, in fact, by implication, in defining common understanding, the Byrd substitute for Biden-Pell makes the same mistake as Biden-Pell.

It does not really improve it. It does somewhat, but not nearly enough because it does not say that the following things comprise the basis for common understanding in a way that says that they are the exclusive, but it does not similarly say including the following but not limited to.

It says that the common understanding shall be the text of the treaty, the provisions of the resolution of ratification, and the authoritative representations. It does not by implication, and certainly does not expressly say, included as the basis within the definition of common understanding that there shall be other competent evidence, including first and foremost the negotiating record.

Mr. President, the Biden-Pell amendment had its origins in an effort to try to dispose of the debate about the interpretation of the ABM Treaty. It may very well be that wiser heads have understood the necessity to placate Members concerned about that debate and, for that reason, have given repeated reassurances that this will not preclude further consideration of the question or settle the debate.

What it really amounts to in this case, Mr. President, is INF medicine far worse than the perceived ABM disease. What the Biden amendment did

and what the Byrd amendment does is cut off the Senate's nose to spite Ronald Reagan's face, and that is a costly exercise.

If those who are concerned with Senate prerogatives are truly concerned with them, they need to be concerned as well with the Senate's ability to do the job. My friend from Michigan says we do not have the documents. He is of sterner stuff than that. Twice now he and I have both demanded the documents, demanded the negotiating records and, I dare say, my friend and I will do so again in the future if another treaty comes our way that requires us to resolve ambiguities on the text or to go further and do our job examining the negotiating record and finding things which are not apparent on the face of the treaty or even apparent in the explicit testimony of authoritative witnesses on behalf of the administration. That is what we did in this treaty. That is how the Senate did its job.

The great irony of this debate, Mr. President, is that we have done our job in this instance, but this amendment, this condition that would be attached, by the Byrd substitute, to the resolution of ratification would, in effect, prescribe a different course for the future.

It would, in fact, if not preclude the Senate from doing its job, at the very least imply that our job is completed when we simply listen passively to witnesses and do not look behind their testimony. That is precisely the problem in the ABM Treaty. Representations were made that were not only in conflict with that of other administration witnesses, but that were flatly contradicted by the negotiating record.

To say that there was at least ambiguity is to understate the case. That is what is wrong with the Byrd amendment. It does not settle that question, and it does something very dangerous. By not specifically addressing itself to the question of whether this binds us only domestically, it by implication states that the basis for the advice and consent of the Senate to ratification of the INF Treaty is a common understanding, and it by implication professes to bind us both with respect to domestic and to international obligations. It makes no distinction; it does not call forth any different course of action. It simply says that there is a basis in common understanding that is the condition upon which Senate advise and consent to this treaty is given.

Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 2 minutes 15 seconds.

Mr. WILSON. Mr. President, let me inquire if the Senator from Pennsylvania is prepared to use some of his time since evidently he is going to have to ask rhetorical questions.

Mr. SPECTER. I have already asked questions. They are not rhetorical. I

am waiting for responses. I do not choose to use any more time at this point.

Mr. McCLURE. Mr. President, will the Senator from California yield to me?

Mr. WILSON. I yield to the Senator from Idaho.

Mr. McCLURE. Mr. President, I thank the Senator for yielding.

I rise in strong opposition to the amendment.

Mr. President, we have heard a lot during the last 2 weeks about killer amendments, and dilatory amendments, and other dark and nasty things lurking around like ghosts. Or as one of my colleagues put it, like the Loch Ness Monster. And I must confess that I didn't know what people were talking about. All I saw was a group of amendments, some of which I supported and some of which I opposed, that addressed important issues associated with this treaty. And I had just about stopped believing in the Loch Ness Monster, when along came this amendment, and I thought, well, there goes a killer amendment.

Let me tell my colleagues who are worried that those other amendments would kill the treaty because the Soviets would refuse to accept them: this amendment is sufficient reason, alone to vote against this resolution and may well persuade Senators to vote "No."

Mr. President, the supporters of this amendment have presented it as non-partisan issue relating solely to the INF Treaty before us, and not to the highly partisan ABM Treaty interpretation issue, which as my colleagues remember kept the Senate tied up in knots last summer.

That, my friends, is simply not true. This amendment is clearly, transparently nothing more than another salvo in the battle over the ABM Treaty. The intention, pure and simple, is to prejudice the Administration's interpretation of that treaty and cripple SDI. This amendment would affect all treaties, not just the treaty at hand. The Byrd amendment, and I quote, "is based on the Treaty clause of the Constitution." This is not some one-time deal. This is an attempt to reinterpret the Treaty clause to alter the constitutional balance of power. It is an attempt to arrogate to the Senate the President's right to make, interpret, and implement treaties. It is an unconstitutional power-grab, pure and simple. But in its application it may well give a future administration the opportunity to bind our country in ways the other signatory nation is patently not bound to observe.

So much for the constitutional theory. What would this amendment have meant for the INF treaty in practice? Among other things, it would have crippled the Senate's ability to answer the questions over futuristic systems. Because the negotiating record would have been inadmissible

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evidence in that debate. The Senate, whose job it is to ratify treaties, would have been forced to rely on the administration's testimony, which originally held that these systems had been addressed and were covered under the treaty.

But as we all know, the administration's authoritative testimony turned out to be not so authoritative, and it turned out these issues were never even discussed. The Senate had to send the State Department back to the negotiating table to clear this issue up. If we had not known that these issues were never discussed, we would not have been aware of the need to send them back to the drawing board. And the United States would have ended up bound unilaterally to something the Soviets never agreed to.

Here is another example of what Biden-Pell-Byrd would have meant for the INF Treaty. The so-called double-negative in article VI paragraph 2 as written is ambiguous and confusing. Nevertheless, we know that the Soviets do understand this provision in the same way we do, and that they in fact expressed concern about the sloppy way the language was drafted. How do we know this? The negotiating record.

Mr. President, far from enhancing the Senate's ability to properly consider treaties, this amendment would make it harder, by excluding a vital body of evidence. This could have dangerous results. The essence of a treaty, that which is agreed upon between the two parties, is not necessarily to be found in communications between the executive and legislative branches of one of those parties. It is to be found in the record of what was discussed, what was offered, what was rejected and what was accepted. By seeking to exclude this body of evidence, the amendment represents an abdication of the Senate's responsibilities.

I urge its defeat.

Mr. President, one of the things that disturbs me about the proposal we have is that while some may argue, and indeed it can be argued, that it is an attempt to tilt the balance to the Senate and deprive the administration the opportunity to interpret treaties, it may well in the future work in exactly the opposite manner by allowing an administration to misrepresent a treaty to the Senate in ways which give the administration more authority to create a different kind of treaty than was agreed upon between the parties and mislead the Senate in ways that bind the United States unilaterally without binding the other signatory to the treaty.

I thank the Senator for yielding.

The PRESIDING OFFICER. The Senator from California has 1 minute remaining.

Mr. WILSON. Mr. President, because this does not prescribe the kind of duty that the Senate is in fact under as a matter of constitutional mandate, because it suggests that there may be a way to perform that

responsibility with less than the care given in the course of the INF Treaty and because it implies that we will be bound both internationally and domestically, at the appropriate time I will move to table the Byrd substitute to the Biden-Pell amendment.

The PRESIDING OFFICER. The time of the Senator from California has expired. Who yields time?

Mr. BYRD. Mr. President, I yield 5 minutes to the distinguished Senator from Indiana, Mr. LUGAR.

The PRESIDING OFFICER. The Senator from Indiana [Mr. LUGAR] is recognized for 5 minutes.

Mr. LUGAR. Mr. President, I thank the distinguished majority leader.

I rise to ask Senators to vote for the Byrd substitute. I do so having participated in the discussions with the distinguished majority leader, with colleagues on both sides of the aisle representing the Foreign Relations, Armed Services, and Intelligence Committees, and of course, our Republican leader, Senator DOLE.

I would simply comment, Mr. President, as is I think well known from the letters that I have written to colleagues and public statements that I have made, I hoped this particular amendment would not be necessary on the INF Treaty. Indeed, I described the entire operation as a mistake, in my judgment. I suspect that each one of us tries to determine what is relative and what is important, and it is apparent to me that a number of colleagues believe this matter is very important. Indeed, the majority leader has pointed out that in his judgment the role of the Senate in the treaty-making process is the most important factor superseding even perhaps the treaty we are discussing.

I would say, Mr. President, that my judgment about these matters is somewhat reversed. I come to a conclusion of support for this amendment because I believe the INF Treaty is very important, and it is apparent to me that the passage of this treaty would have been difficult within the time period which we are talking about without accommodation of colleagues listening to one another.

Having said that, Mr. President, let me simply comment that the amendment as it has been worked out in a bipartisan way does recognize various arguments of both Democrats and Republicans, both sides of the aisle. I think a reading of that shows through recognition that colleagues were listening to each other and working with each other. But I would point out that the Byrd amendment speaks only to relations between the two branches, that is, the Senate and the President.

As was clear in our conversations, the Supreme Court is entirely outside of this agreement, and as other colleagues have pointed out in due course the Supreme Court may very well rule quite apart from the general description of events which we give to each other today on the Byrd amendment.

I point out, furthermore, that the checks and balances of our Government still work, and I appreciate the frustration of many colleagues on the other side of the aisle who feel that the current administration has attempted to reinterpret a treaty. In my own judgment, the current administration did not attempt to reinterpret a treaty. The ambiguity at least in the ABM Treaty has been cited by the administration as a basis for interpretation. But let us take the worst case, that the current administration deliberately took a look at a proposition that both the Senate and the President had looked at and went entirely in a different direction. In truth, Mr. President, we have in front of us the actual political history of the past 2 years, and that is the majority party in the Senate has not agreed with the interpretation of the President of the United States of how we ought to develop the SDI program, and as a result that program has either been stymied or has been tailored to fit the will of the majority.

Now, I have not agreed with the tailoring or the stymieing, but nevertheless, I recognize that in our political system this is the way it works. In short, even if a President should attempt to reinterpret a treaty, the checks and balances of the legislative-executive relationship check any exercise of arbitrary judgment or arbitrary authority.

Therefore, Mr. President, I saw no particular reason to try to pin all of this down 15 different ways. It seems to me the system works adequately as it stands and that the Supreme Court finally will offer judgments in any event quite apart from what we are saying to each other today.

But that argument cuts both ways. If my argument is correct that what we are doing today is redundant or maybe even irrelevant, others could argue, if that be so, why worry about it?

In my judgment, Mr. President, we finally come down to a point in which the amendment we have fashioned, whether it is redundant or irrelevant, does at least recognize several points of view which I think have validity.

The PRESIDING OFFICER. The time of the Senator from Indiana has expired.

Mr. LUGAR. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. KERRY. Mr. President, will the distinguished majority leader yield time?

Mr. BYRD. I yield 5 minutes to the distinguished Senator.

The PRESIDING OFFICER. The Senator from Massachusetts, Mr. KERRY, is recognized for 5 minutes.

Mr. KERRY. I thank the distinguished majority leader.

Mr. President, I would agree with certainly part of the comments from the Senator from Indiana. It is unfor-

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tunate that we are here discussing this particular amendment. But I would assert that it is vital to the treaty process that this amendment be passed, and that the Senate assert its constitutional prerogatives.

Mr. President, article VI of the Constitution is very clear. It says that:

... all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land, ...

Article II say the President must take care that the laws be faithfully executed. And in another article, it says that a treaty can be made only with the advice and consent of the Senate.

So it is only with our advice and consent when we interpret what a treaty means that a treaty can become the supreme law of the land, which the President must carry out.

In the course of hearings I had an exchange with Judge Sofaer which I think is relevant to why this is so necessary. I asked the judge what was put in front of the Senate in 1972. And he said in referring to comments he made that the executive could tell the Senate what a treaty meant. And I said to Judge Sofaer:

... And the Executive had an opportunity to tell the Senate how to interpret the treaty of 1972, didn't it?

Judge SOFAER. Yes.

Senator KERRY. And it did so by sending specifically the treaty itself, document one, it sent the agreed statements; correct?

Judge SOFAER. Yes.

Senator KERRY. It sent the unilateral statements.

Judge SOFAER. [Nods affirmatively.]

Senator KERRY. It sent the letter of transmittal.

Judge SOFAER. [Nods affirmatively.]

Senator KERRY. And it sent the Rogers report to the President.

Judge SOFAER. Precisely.

Senator KERRY. Those are the items that were before the U.S. Senate. That was the communication of the Executive to tell us what the treaty meant. Correct?

Judge SOFAER. Yes, sir.

The Senate then proceeded, based only on those items, to interpret that treaty and to decide what it meant.

As the distinguished Senator from Georgia has said very clearly in a statement that is part of the record, all of the Senators, including Senator BUCKLEY who voted against the treaty precisely because it did not do what he wanted it to do, interpreted the treaty on the basis of what was in front of them.

Thirteen years later a different President, who had nothing to do with that negotiating process, comes before us and says, wait a minute, the treaty does not mean what the Senate believed it meant in 1972. It means something that is sent out in a secret document that was never put in front of you, which you never saw, which was never even collected as a document in one entity, and that is what it means today.

Now, if that were true, any President at any time could withhold any docu-

ment, call it a secret, come back years later, and say, when you voted to say the treaty meant X, it did not mean X at all, it meant Y. If that were true, Mr. President, then the entire Constitution would be turned topsy-turvy. It would be meaningless to say that this is the supreme law of the land, passed only with the advice and consent of the Senate, meaning what the Senate interpreted it to mean at the time it passed it.

So it is too bad that we are here today, Mr. President. But we are here today not to resolve the ABM issue, and this does not. We are here today simply to assert that this treaty when we pass it will mean what the record of debate and what we have interpreted it to mean based on, what the executive told us that it means in 1988, not when someone comes forth and says what it means years hence.

And the Byrd change to the Pell-Biden amendment sets forth nothing except the law. It sets forth what is precisely the constitutional responsibility of this institution. And it says that we will not agree or adopt, the United States will not agree or adopt, an interpretation that is different from what we believe this treaty to mean today based on the understanding that is put in front of us by the text and based on the authoritative representations provided by the executive itself.

I cannot think of a more important statement for us to make though an unfortunate statement for us to have to make. But it is vital to the meaning of this treaty and it is far, far more vital as the majority leader has asserted to the Senate process and to the constitutional process itself.

I yield such time back to the leaders as may remain.

The PRESIDING OFFICER. The time of the Senator from Massachusetts has expired. Who yields time? The Chair will announce that the majority leader has 17 minutes remaining and that the Senator from Pennsylvania has 17 minutes remaining.

Who yields time?

Mr. SPECTER. Mr. President, rather than have time wasted, I ask unanimous consent that half of the time I use be charged to the other side.

Mr. BYRD. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The Chair will announce the time, if no one yields time, will be allocated proportionately to the two Members that have the time remaining.

Mr. BYRD. Mr. President, I believe I have 17 minutes left. I want to save 12 minutes of that for Mr. NUNN. I had intended to save myself 5. I yield 3 minutes of my 5 to Mr. SIMON.

The PRESIDING OFFICER. The Senator from Illinois, Senator SIMON, is recognized.

Mr. SIMON. I thank the distinguished minority leader and my colleagues in the Senate.

I rise in support of this amendment, and I think if we move away from the principles of the Biden amendment—and this perfecting amendment does not—we are really getting on thin ice. If we can massively reinterpret contrary to the common understanding of a treaty, then a succeeding administration that will be in here in another 7 months can reinterpret that. We will not know where we are. It is inviting all kinds of problems. And then there is a second consideration that I think should not be lost in this body, and that is if we can reinterpret contrary to the common understanding, then there is nothing to prevent the Soviets or any other country with whom we have a treaty from massively reinterpreting.

I think it is simple prudence that we stick with the basics of the Biden amendment and the perfecting amendment offered by the distinguished majority leader.

There will be things that are ambiguous from time to time. And there we may have some problems, or there will be interpretations that we may disagree on how to interpret. But where there is that clear common understanding as in the ABM Treaty, we cannot suddenly unilaterally and unilaterally within a single administration decide we are going to take off in a different direction. I think we are getting on really thin ice, and we are jeopardizing the whole treaty process if we do that.

I strongly support the amendment of my distinguished majority leader, and the thrust of the Biden amendment. I think it is a safeguard for all of us.

The PRESIDING OFFICER. The time of the Senator from Illinois has expired.

Who yields time?

The Chair will announce that the majority leader has 14 minutes remaining, and the Senator from Pennsylvania has 16 minutes 48 seconds remaining.

Mr. BYRD. Mr. President, I am sure the distinguished Senator from Pennsylvania wants the last word. I am perfectly willing for him to have it. I am going to use 2 minutes of my own time. The remaining time will be for Mr. NUNN. I hope he will be on the floor and ready to utilize it.

Mr. President, let me summarize the intent and the purpose of the amendment in closing. It binds the President to the interpretation of the treaty which the Senate and the President share at the time that the Senate gives its advice and consent to the treaty. The amendment makes clear the bases on which that shared understanding are: first, the text of the treaty and the provisions of the resolution of ratification; second, the authoritative representations of the administration regarding the meaning of the treaty.

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The amendment states that no reinterpretation can occur without the Senate's proper participation. The amendment acknowledges that if future cases arrive concerning the interpretation of the meaning of a provision of the treaty where a shared understanding has not been reached, then applicable U.S. law will apply. This provision does not refer to ambiguities or disagreements but to new issues that may arise in the future which we have not anticipated at the present time.

The amendment protects and reinforces the role of the Senate in the treaty-making process. It ensures that the representations of the executive branch regarding the meaning of the treaty are binding on future administrations. In other words, reinterpretation by a future President without the Senate's consent will be impossible.

In adopting this amendment, we will not only be strengthening the role of the Senate and its institutional responsibilities; we also will be strengthening this treaty and strengthening the United States in its dealings in future negotiations. It will be clear that the U.S. Senate as a whole, the President, and Congress understand what the treaty means and agree to bind the United States to the obligations which the treaty entails. This is as it should be, and this amendment deserves the support of all Senators.

THE PRESIDING OFFICER. The time of the majority leader, allocated to himself, has expired.

Who yields time?

Mr. BYRD. Mr. President, does the distinguished Senator from Georgia wish me to yield the remaining time to him?

Mr. NUNN. I will try to use less than that.

Mr. BYRD. I yield the remaining time to Mr. Nunn.

THE PRESIDING OFFICER. The Senator from Georgia is recognized for 1½ minutes.

Mr. NUNN. Mr. President, I rise in support of the Byrd amendment on treaty interpretation. It is most appropriate this amendment bears the name of the majority leader. Over the last 3 years, when the Senate's institutional role has been under serious challenge, he has steadfastly preserved and protected the constitutional prerogatives of this body.

It is also fitting that this amendment has strong bipartisan support. Senators DOLE, LUGAR, WARNER, and COHEN have ensured that this historic provision will be viewed as representing the broad views of the Senate as an institution. We owe a particular debt of gratitude to Senator COHEN, who fashioned the language that met the bipartisan needs of the Senate.

I would also like to commend the Foreign Relations Committee for including in the resolution of ratification a provision to ensure that the Senate's consent to the INF Treaty is conditioned upon agreement by the

President that the treaty we are reviewing today will be respected by the executive branch in the future. I would like to pay special tribute to Senator BIDEN for his thoughtful leadership on this issue, to Senators PELL, CRANSTON, and SARBANES for carrying on this effort during Senator BIDEN's illness, and to Senators HELMS and MURKOWSKI for their role in ensuring bipartisan support in the Foreign Relations Committee.

ORIGINS OF THE TREATY INTERPRETATION CONTROVERSY

The necessity for this provision stems from the effort by the State Department's legal advisor, Judge Abraham Sofaer, to radically alter the relationship between the Senate and the President in the treaty-making process.

Under the Constitution, the President makes treaties "by and with the advice and consent of the Senate, provided two-thirds of the Senators present concur." Hamilton, in the *Federalist* (No. 75) clearly illustrated the intent of the framers that treaty-making be a shared power between the Senate and the President, based on mutual trust:

The power, in question seems . . . to form a distinct department, and to belong, properly, neither to the legislative nor the executive. The qualities elsewhere detailed as indispensable in the management of foreign negotiations, point out the Executive as the most fit agent in those transactions; while the vast importance of the trust, and the operation of treaties as laws, plead strongly for the participation of the whole or a portion of the legislative body in the office of making them.

Because the Senate is an equal partner with the President in the treaty-making process, we have a direct, constitutional interest in ensuring that treaties are accurately presented and faithfully upheld. The executive branch, however, has challenged the Senate's role by inventing a novel theory—that the President has the power to reinterpret treaties and change obligations that were clearly understood and accepted by the Senate at the time of ratification.

We first encountered this doctrine in 1985 during hearings before the Senate Armed Services Committee. Judge Sofaer was asked if he agreed "that the purpose of the Senate's extensive ratification hearings on the ABM Treaty was to clarify ambiguities of interpretation." In his response, he argued that: "Although this process may have helped answer questions in particular Senators' minds, it could not result in authoritative clarifications of any ambiguities in the treaty, because statements made during the hearings were unilateral." In other words, because the testimony on the treaty was not offered in a joint United States-Soviet forum, Judge Sofaer viewed it as nothing more than interesting information which could be freely disregarded by the executive branch in the future.

Judge Sofaer expanded his assault on the role of the Senate in March

1987 when he told the Foreign Relations Committee:

When [the Senate] gives its advice and consent to a treaty, it is to the treaty that was made, irrespective of the explanations it is provided.

Under this version of the Sofaer doctrine, the executive branch could treat prior testimony to the Senate as irrelevant. Indeed, under Judge Sofaer's approach, the executive branch is free to mislead the Senate as to the meaning of a treaty simply because the statements in ratification hearings are "unilateral."

PROBLEMS POSED BY THE SOFAER DOCTRINE FOR THE SENATE'S CONSIDERATION OF THE INF TREATY

In a letter to the President last September, I noted the grave implications of the Sofaer doctrine for the Senate's consideration of the INF Treaty:

In effect, the Sofaer doctrine holds that if the Senate is misinformed by Executive Branch officials as to the meaning of a proposed treaty, that is simply too bad. Judge Sofaer has put the Senate on notice that if Congress relies upon the testimony of your Administration as to the meaning of an INF treaty, it will be at its own risk * * *

The effect of the Sofaer doctrine for the INF Treaty in particular and the treaty making process in general would have been disastrous. Because treaties are the supreme law of the land, the Sofaer doctrine—if not repudiated—would compel the Senate to incorporate into its resolution of ratification on every treaty and amendment for every explanation given by an executive branch official lest it be disavowed as "unilateral" after ratification. Treaties so laden would sink of their own weight. This would be very damaging; not only to the Senate but also, more important, in the long run, to the Presidency itself, in the conduct of foreign policy. You cannot conduct foreign policy through treaties if these are the rules of the game.

THE AGREEMENT WITH SECRETARY SHULTZ

In an effort to expedite consideration of the INF Treaty, Senators BYRD, PELL, BOREN, and I worked with Secretary Shultz to address the Treaty interpretation issue. The Secretary, in a letter dated February 9, 1988, assured us that—

All INF testimony of executive branch witnesses, within their authorized scope, is authoritative. We will inform the relevant committee of any instance in which a witness' testimony is not authoritative in any respect.

Administration testimony and materials for the record can be regarded as authoritative, as described above, without the need for the Senate to incorporate them in its resolution of ratification.

The Reagan administration will in no way depart from the INF Treaty as we are presenting it to the Senate.

THE ADMINISTRATION CASTS DOUBT UPON THE SHULTZ AGREEMENT

We began our hearings on the assumption that the administration was prepared to agree that the executive branch would be bound by the authoritative testimony of its witnesses. As

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our hearings drew to a close, however, the administration undermined our confidence in that assumption, in a letter from the counsel to the President, Arthur B. Culvahouse, Jr. The letter suggested that it would be wrong to treat testimony as authoritative if it is received from officials below the level of Secretary of State or if it is addressed to trivial or unimportant issues. The Culvahouse letter would have had the effect of leaving the executive in the future with the freedom to reinterpret the INF Treaty by claiming that the administration's testimony only addressed a trivial or unimportant issue.

The Culvahouse letter also suggested that the administration testimony would not be binding unless "the Senate as a whole" asserted a view on the subject of the testimony. This completely undermined the assurance from Secretary Shultz that the Senate need not incorporate administration testimony in its resolution of ratification, because the only way that "the Senate as a whole" can assert a view is to attach a condition on the resolution of ratification.

In addition, the Culvahouse letter implied that the Shultz letter was intended merely to serve as an expedient means of dealing with the INF Treaty and that the commitments by Secretary Shultz would apply only to the Reagan administration. By denying that the Shultz letter had any constitutional foundation, the Culvahouse letter would have served as a invitation for a future administration to disavow the Shultz assurances at the earliest opportunity.

Finally, Mr. Culvahouse stated that the President could only be bound by testimony that was "generally understood, clearly intended and relied upon by the Senate." As the New York Times noted in an editorial: "Since it is hard to know what this mumbo-jumbo means, Presidents would be free to do with treaties as they wish." (May 5, 1988).

Mr. Culvahouse issued a subsequent letter which asserted that there were no conflicts between his letter and the assurances we received from Secretary Shultz. This simply underscored our concern that the commitment from Secretary Shultz would expire next January, leaving future administrations free to reinterpret the INF Treaty and give it a meaning contrary to the interpretations presented to the Senate by the Reagan administration.

In the report of the Armed Services Committee on the INF Treaty, we noted the problems presented by the Culvahouse letter and said: "If the matter is not satisfactorily resolved, Members of the Committee may find it necessary to offer appropriate measures during consideration of the Treaty by the Senate, including understandings or amendments to the Treaty."

THE ADOPTION OF THE BIDEN CONDITION AND ITS BENEFICIAL EFFECT IN EXPEDITING SENATE CONSIDERATION OF THE TREATY

Recognizing the serious difficulties that the Sofaer doctrine would present for the ratification process, the Foreign Relations Committee—under the guidance of Senator PELL, with the leadership of Senator BIDEN, Senator SARBANES, and others—wisely added a treaty interpretation condition to its resolution of ratification.

As we noted in the report of the Armed Services Committee on the treaty: "All Administration testimony and material submitted for the record have been regarded by the Committee as significant, and will form an essential element of the body of evidence before the Senate as it determines whether to give its consent to the INF treaty." Because the Foreign Relations Committee included a treaty interpretation condition on its resolution of ratification, there has been no need to clutter the resolution with issues satisfactorily addressed by the administration in its testimony before the Senate.

My approach to the ratification debate would have been much different had the Foreign Relations Committee not included the treaty interpretation condition in its resolution of ratification. Rather than signing a cloture petition, I would have vigorously opposed cloture until every aspect of the administration's testimony had been incorporated in the resolution. This would have required extensive floor debates on both the form and content of amendments governing—

- the effect of article XIV on assistance to our allies;
- the impact of the double negative in article VI on interchangeable stages;
- the definition of range of new type of INF missiles;
- the GLCM range definition;
- the relationship between the treaty and Pershing 1A missiles;
- the ability of the parties to make technical changes to the protocols without using the treaty's formal amendment procedures;
- the definition of "force majeure" for purposes of canceling an inspection;
- the inspection of SS-20 cannisters prior to elimination;
- and literally hundreds of other issues raised by the members during our hearings.

If the Foreign Relations Committee had not recommended a treaty interpretation condition, there would have been hundreds of issues we would have had to incorporate on the floor of the Senate, indeed, rather than attempting to complete the INF Treaty debate this week, we would be planning for an exhaustive debate throughout the summer.

THE IMPORTANCE OF RETAINING A TREATY INTERPRETATION CONDITION ON THE RESOLUTION OF RATIFICATION

Now that the treaty interpretation condition has performed its service and brought us to the point where

timely Senate consent is virtually assured, there are some who have suggested that we should strip it from the resolution of ratification and rely on the good faith of the executive branch. Should anyone doubt that the Sofaer doctrine is alive and well, they need only consider the position that the executive branch has taken in a case entitled *Rainbow Navigation, Inc.* versus Department of the Navy, decided only last week in the District Court for the District of Columbia.

The *Rainbow Navigation* case involved a 1986 treaty between the United States and Iceland regarding allocation of shipping rights. An American carrier, *Rainbow Navigation*, alleged that the Navy planned to administer the rights in a manner that would prejudice the interests of American shipping protected by the treaty, and a preliminary injunction was granted by Judge Harold Greene.

In the course of his opinion, Judge Greene noted that the administration had expressly testified on the issue in question:

Perhaps even more significant than the treaty language are the representations made by Executive Branch officials to the United States Senate in connection with the ratification proceedings. These statements . . . clearly support the interpretation that rights would vest without further legislation, for the officials represented to the Senate that if ratified, the treaty would protect the existing U.S. flag presence on the United States-Iceland route.

Judge Greene noted that during the litigation, the administration "disavowed in court the representations made by the Navy and the Department of State to the Senate during treaty ratification proceedings as merely 'precatory' and 'nonbinding.'"

When you tell the court that your testimony before the Senate Foreign Relations Committee on a treaty is merely precatory and nonbinding, you have indeed undermined not only the Senate as an institution but the whole treaty ratification process as set forth in the U.S. Constitution. So this is not a trivial matter.

The executive branch's position in the *Rainbow Navigation* case illustrates very well the administration's utter contempt for the ratification process.

This was not an ancient treaty or an agreement negotiated by a different administration. This was a case in which the current administration found it convenient to disavow its own testimony less than 2 years after it was presented to the Senate.

What is particularly damning about the *Rainbow Navigation* case is the fact that the administration's testimony to the Senate on the Iceland treaty was, in the now-famous words of the Culvahouse letter, "clearly intended, generally understood, and relied upon by the Senate in its advice and consent to ratification" and hence binding on the President "as a matter of domestic

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law." As Judge Greene noted in his opinion:

Relying on these representations, the Senate Foreign Relations Committee recommended that the Senate ratify the treaty. In fact, the committee stated in its report to the full Senate that advice and consent were being conditioned upon "... assurances given by the Departments of State and Defense ..."

By adopting a position in the Rainbow Navigation case that deviates even from the statements made by the administration in the Culvahouse letter, the administration has made it very clear to us that we obviously cannot rely on letters or memos as the basis for precluding reinterpretation of the INF Treaty by a future administration.

This Justice Department simply has no sense of shame. At the very height of the controversy over treaty interpretation, it has had no compunction about telling a Federal court that when the executive branch represents the meaning of a treaty to the Senate, it can say whatever it wants and then disavow it shortly after ratification. Without a treaty interpretation provision, we have nothing to prevent the executive branch from walking away from its INF testimony in less than a year. It is essential that we condition our consent to the treaty upon the agreement of the executive branch to abide by the meaning of the treaty as presented to us in our hearings.

Without a treaty interpretation provision, we have nothing to prevent the executive branch from walking away from its testimony on INF in less than a year. I do not think that is going to happen, but certainly this provision would ensure that it does not happen.

In the future this amendment, which has bipartisan support, will be deemed to have set forth not a new law, not something that is new, not a new constitutional principle, but rather a reaffirmation of what the law of the land and the Constitution of the United States have provided for all of these years.

This is not a new departure. It is really unfortunate that we are even having to deal with it because it is so clearly based on history, based on the U.S. Constitution, based on the laws of the land, based on the role of the Senate as an institution, and based on pure common sense and comity between the executive branch and the Senate as an institution.

THE BYRD AMENDMENT

The Byrd amendment is consistent with the condition recommended by the Foreign Relations Committee. The committee, in its report, went to great lengths to state that the condition was not intended "to be dispositive on the issue of ABM Treaty interpretation." While the Byrd amendment does not resolve the ABM Treaty issue, it affirms enduring constitutional principles which apply to the interpretation of all treaties, including the ABM Treaty. I understand that differences

may persist as to factual issue of ambiguity as to the text, ratification debate, and negotiating history of the ABM Treaty. But this amendment repudiates the Sofaer it clear that the executive branch is bound by authoritative representations as to the meaning of a treaty, and that such meaning cannot be changed by resort to the negotiating record or otherwise without the approval of the Congress through a subsequent statute or treaty.

The Byrd amendment must be understood in the following context:

All executive branch testimony is regarded by the Senate as important to its consent.

The negotiating documents provided to the Senate have not been presented in such a way that they constitute representations by the executive branch as to the meaning of the treaty.

The Senate has relied on executive branch representations in the hearings on the treaty, and has therefore deemed it unnecessary to make a detailed review of the negotiating documents or to attach to the resolution of ratification understandings, amendments, or reservations embodying all such testimony.

The Senate reserves the right to obtain any element of the negotiating history necessary to meet the constitutional obligations of the Senate should an issue arise as to treaty interpretation involving the President's reliance on the negotiating history.

Nothing in the treaty interpretation condition shall be construed to imply, with respect to any prior or subsequent treaty, that the President can interpret such treaty in a manner contrary to or inconsistent with the meaning of the treaty presented to the Senate, regardless of whether such a condition was placed in the resolution of ratification.

The treaty interpretation condition provides a sensible approach to a critical problem. Newsday, in an editorial on May 23, observed that this issue is "central to our constitutional system ...". The Constitution says treaty making is a shared responsibility. The "... condition simply says that the executive branch cannot decide by itself to reinterpret the INF Treaty." According to the Association of the Bar of the City of New York, the principles set forth in the treaty interpretation condition "are fundamental to our constitutional scheme and cannot reasonably be questioned." By including the treaty interpretation condition on the resolution of ratification, we will confirm the constitutional significance of the Senate's proceedings in the ratification process, thereby ensuring that this treaty will be respected by the executive branch in the future.

Mr. President, I know the time is precious here at this hour so I reserve the remainder of my time.

Mr. BUMPERS. Is the Senator reserving the remainder of his time?

Mr. NUNN. Yes, I will be glad to yield to the Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Does the majority leader have any time remaining?

Mr. NUNN. I will yield the floor. The time is under control of the majority leader.

Mr. BYRD. I yield the remaining time to Mr. BUMPERS.

The PRESIDING OFFICER. The Senator from Arkansas is recognized for 2 minutes.

Mr. BUMPERS. Mr. President, actually the Senator from Georgia in his summation just now said what I wanted to say and that is that we are talking as much about common sense here as we are international law and treaty interpretations and constitutional law.

I want to say that it is an absolute mystery to me why we are here. We are here for a simple reason. That is Judge Sofaer was told to find a loophole of some kind that will allow us to test in violation of what we believe in the preceding 15 years was the ABM Treaty and to give the President on the Sofaer doctrine the right to literally lie to the U.S. Senate and say, "Just because I said it does not make it so" is offensive to me.

How can you expect nations like the Soviet Union to negotiate with us? No self-respecting nation is going to negotiate with you seriously when you have a negotiating record, when you have a clear understanding of the clear intent of a treaty and you can come back 15 years later for whatever reason because you want to test SDI or some other reason in the future and literally unilaterally abrogate a solemn compact.

It is offensive to me as a Senator.

The PRESIDING OFFICER. All time has expired.

Mr. BUMPERS. I thank the majority leader for yielding.

The PRESIDING OFFICER (Mr. BURDICK). The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, will the Chair confirm that I have 17 minutes remaining?

The PRESIDING OFFICER. Sixteen minutes and 48 seconds.

Mr. SPECTER. I thank the Chair.

Mr. President, I ask the distinguished Senator from Georgia [Mr. NUNN] to respond to a few questions, but before proceeding, the distinguished Senator from Georgia made a reference to the Rainbow navigation case and it was referred to earlier. Part of it was placed in the Record.

I ask unanimous consent at this point that the full text of the opinion be printed in the Record.

There being no objection, the full text of the opinion was ordered to be printed in the Record, as follows:

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[Civil Action No. 88-0992]

RAINBOW NAVIGATION, INC., PLAINTIFF, v. DEPARTMENT OF THE NAVY, ET AL., DEFENDANTS

OPINION

I

This is the third time that these parties have been before the Court with respect to similar controversies.¹

In October 1985, at the request of Rainbow Navigation, Inc. (Rainbow), the court issued an injunction against the Department of the Navy, restraining Navy plans to deprive Rainbow of the preference granted to it by the Cargo Preference Act of 1904, 10 U.S.C. § 2631. It appeared that the Secretary of the Navy had determined that Rainbow's rates were "excessive and otherwise unreasonable"—if true, a valid reason for denying it the otherwise available preference. But after briefing and hearing, the Court found that the Secretary's findings "were nothing more than an after-the-fact attempt to shore up a decision made on other grounds." *Rainbow Navigation, Inc. v. Department of the Navy*, 620 F. Supp. 534, 540 (D.D.C. 1985). More specifically, the Court concluded that the Navy's determination was not based on Rainbow's freight rates but on "foreign policy, political, or geopolitical grounds." *Id.* at 541.

What had happened was that the Department of State, desirous of good relations with Iceland, an ally of the United States, gave in to entreaties from that nation for the recapture of the U.S. military cargo trade exclusively for Icelandic shipping interests.² The determinations, declarations, and representations made to the Court regarding Rainbow's allegedly excessive rates, it had turned out, not only were not borne out by the facts but were merely a pretext obscuring the real foreign policy purposes of our government.

Since Rainbow was not in violation of the Cargo Preference Act, and was entitled under law to the benefits of the Act, the Court issued an injunction which required the restoration of that company's preference with respect to the carriage of U.S. military supplies between this country and Iceland in accordance with the Act. The Court of Appeals, in an opinion by then Judge Scalia, affirmed this Court's decision. *Rainbow Navigation, Inc., v. Department of the Navy*, 783 F.2d 1072 (D.C. Cir. 1986).

While the issues regarding this Navy attempt to bypass the law were still in the courts, the Department engaged in yet a second subterfuge designed to elbow Rainbow out of the Icelandic trade. This time the Navy sought to dispense with Rainbow's services by a diversion of the cargo at issue to military aircraft. Government regulations provided that "the preferred method of transporting supplies for the Government is by commercial carriers," and that government aircraft may be used only "if . . . they are available and not fully utilized . . ." 48 C.F.R. § 7.101(b)(1). Once again, solemn declarations were submitted to the Court to the effect that all missions that carried cargo from Iceland to this country were scheduled there "for purposes other than the carriage of cargo back to the United States" and that "missions were not flown to [Iceland] for the purpose of picking up [such] cargo." This, too, was untrue.

¹ The parties are the Department of the Navy and some of its officials, Rainbow Navigation, Inc., the International Organization of Masters, Mates & Pilots (the Union), and Iceland Steamship Co., Ltd. (Elmskip). Elmskip is before the Court for the first time in the current phase of the litigation.

² Rainbow may be the only effective competitor of the Icelandic shippers.

The evidence showed that, after the then lawsuit was filed, a sharp increase occurred in the number of flights from Iceland to this country, and a corresponding decrease in the amount of cargo carried by Rainbow. The Court ultimately concluded that the Navy had once again taken steps unlawfully to squeeze Rainbow out of the Icelandic trade. Memorandum Order dated October 17, 1986.³ This brings us to the current phase of the litigation.

II

On September 24, 1986, the United States and Iceland signed a treaty, including a memorandum of understanding (MOU),⁴ regarding the same military cargo route between the two countries that had been at issue previously.⁵ That treaty provides for a competition between United States flag carriers and Icelandic shipping companies for the transport of military cargo between the two countries. The method by which the competition is to be carried out is described in the memorandum of understanding as follows:

Each competition shall result in contract awards to both an Icelandic shipping company and a United States flag carrier such that not to exceed 65 percent of the cargo shall be carried by the lowest bidder and the remainder shall be carried by the next lowest bidder of the other country . . .

Pursuant to the treaty and the MOU, a single competition was held in 1987 for the carriage of one year's worth of military cargo on the United States-Iceland route. Elmskip, an Icelandic concern, was the "lowest bidder," receiving 65%, and Rainbow took the remaining 35% as the "next lowest bidder." However, this year the Navy planned to change the process. Acting through the Military Sealift Command,⁶ the Navy has announced that it intends to hold two separate competitions, separately priced—one competition for the 65 percent of the cargo, the other, a separate competition, for the remaining 35 percent of the cargo.⁷

³ Partial Summary Judgment was granted to Rainbow as it had requested.

⁴ Treaty between the United States of America and the Republic of Iceland to Facilitate their Defense Relationship, with related Memorandum of Understanding, September 4, 1986. The United States Senate ratified the treaty and memorandum of understanding on October 8, 1986.

⁵ Before the treaty was signed and ratified, the Navy proposed a regulation that, as the Senate recounted in its report on the treaty, "purported to interpret the 'excessive or otherwise unreasonable' provision in the 1904 [Act], but that would have, in effect, given the Secretary of the Navy the discretion to waive the [Act] at any time." S. Rep. No. 27, 99th Cong., 1st Sess. 3 (1986). This appears to have been yet another attempt to oust Rainbow from the Icelandic trade route.

⁶ The Military Sealift Command is the United States contracting agency responsible for procurements for the United States-Iceland military cargo sea route.

⁷ The Request for Proposals for these competitions was issued on March 25, 1988. In addition to holding two competitions instead of one, other changes in the RFP included that all the cargo would be charged on a straight freight basis (rather than permitting the carrier of the 35 percent to use a time charter), that vessel specifications would no longer be required, that the Icelandic port of destination would be Reykjavik, much farther from the U.S. military base than Njardvik, that there would be no established schedule for travel, and that there would be no small business setaside. Rainbow complains about these changes as well, but the Court need only rest its preliminary injunction on the Navy's violation of the treaty and MOU.

Had Rainbow⁸ not filed this action to stop the procurement as violative of the treaty, the MOU, and the Administrative Procedure Act, the Navy would have awarded contracts for the two portions of the cargo carriage on April 25, 1988.⁹ However, since April 15, 1988, the Navy has been under a temporary restraining order enjoining it from proceeding with the 1988 procurement in the manner planned.

III

Before the Court can reach the substance of Rainbow's complaint, it must address the Navy's threshold defenses—that Rainbow lacks standing to sue, that the Court has no jurisdiction, and that sovereign immunity bars the action. None of these defenses has merit; only the standing issue deserves extended discussion.

The Navy suggests that Rainbow lacks standing because neither the treaty nor the MOU expressly grants a private right of action.¹⁰ However, the absence of an express grant is not determinative. When a treaty is not explicit on the question whether it is of its own force a part of United States domestic law, a court must interpret it to effectuate the intent of the signatory parties.¹¹

As the Court of Appeals for this Circuit concluded in *Diggs v. Richardson*, 555 F.2d 848, 851 (D.C. Cir. 1976); and *Cardenas v. Smith*, 733 F.2d 909, 918 (D.C. Cir. 1984),¹² the language of a treaty may manifest an intent by the signatories that it be or not be self-executing, and if the language is uncertain, resort may be had to the circumstances surrounding the treaty's execution to ascertain that intent. *Id.*¹³ A court interprets a treaty as self-executing unless "the agreement manifests an intention that it shall not become effective as domestic law without the enactment of implementing legislation, or in those rare cases where implementing legislation is constitutionally required."¹⁴ Applying these standards, the Court has no difficulty concluding that the United States-Icelandic treaty does not require implementing legislation.¹⁵

⁸ While the Court herein generally refers for the sake of convenience only to Rainbow on the plaintiffs' side of this litigation, the Union has intervened; it is proceeding on the basis of the same arguments as those made by Rainbow; and it is entitled to the same benefits flowing from the Court's orders. See note 1, *supra*.

⁹ None of the changes from the 1987 requirements (see note 7, *supra*) may become effective if their purpose or effect would be to interfere, directly or indirectly, with the preliminary injunction or the Rainbow and Union rights recognized herein.

¹⁰ In the Administrative Procedure Act, Congress conferred the right of judicial review upon any person "adversely affected or aggrieved by agency action." 5 U.S.C. § 702. Potential and actual government contractors have standing to proceed in district court to challenge a procurement under the Administrative Procedure Act. *Scanwell Laboratories, Inc. v. Shaffer*, 424 F.2d 859, 861-873 (D.C. Cir. 1970).

¹¹ Restatement (Second) of Foreign Relations § 154 (1965).

¹² See also *People of Saipan v. Department of Interior*, 502 F.2d 90, 97 (9th Cir. 1974).

¹³ Reference by courts to contextual factors surrounding a treaty in order to determine whether it is self-executing occurred even in the politically charged atmosphere of Iranian seizures of property and a suit against a foreign government. See *American International Group v. Islamic Republic of Iran*, 493 F. Supp. 522 (D.D.C. 1980).

¹⁴ Restatement (Second) Foreign Relations (Revised) Tentative Draft No. 1 (1980) § 131.

¹⁵ Were the treaty not to be read as self-executing, it would not become part of United States domestic law. As a result, Rainbow presumably could sue for relief under the Cargo Preference Act. However, that was not the intent of the two governments when they signed the treaty.

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In the first place, the government has offered no evidence to rebut the presumption (see text to note 14, *supra*) that the Iceland treaty was intended to be effective as domestic law. That alone should end the matter. But there is also ample positive evidence of the self-executing nature of the treaty.

The language of the treaty itself suggests that it was intended to operate of its own force upon ratification. Article I declares that cargo transportation services "shall be provided" on the basis of a competition between United States and Iceland shipping companies which will "ensure" the continued well-being of shippers from each country. Since the subject of the treaty is U.S. military cargo, it is implicit that the United States contracting authority would carry out the competition. This understanding is borne out by the terms of the MOU which explicitly refer to the United States contracting authority.¹⁶

Similarly, the treaty goes on to state in Article IV that the "provisions of this Treaty and any implementing arrangements concluded pursuant to Article I shall apply notwithstanding any prior inconsistent law or regulation of the United States of America. . . ." thus, the treaty mandates in terms that, for domestic law purposes, it displaces existing American law.

Perhaps even more significant than the treaty language are the representations made by Executive Branch officials to the United States Senate in connection with the ratification proceedings. These statements, discussed below, clearly support the interpretation that rights would vest without further legislation, for the officials represented to the Senate that if ratified, the treaty would protect the existing U.S.-flag presence on the United States-Iceland route.¹⁷

Thus, at the hearings on ratification of the treaty, the Honorable Edward J. Derwinski, Counselor of the Department of State, with Rear Admiral Walter T. Piotti, Jr., Commander of the Military Sealift Command at his side, assured the Senate that he agreed with the statement by American maritime organizations of which the following paragraph is a part:

The ABM Treaty Interpretation Resolution, Report of the Committee on Foreign Relations United States Senate, S. Rep. No. 164, 100th Cong., 1st Sess. 49 (1987). See also Restatement (Second) Foreign Relations Law of the United States (Revised), Tentative Draft No. 6 (1985), § 314, comment d and § 314(2).

The Administration must further assure that the Treaty, if ratified, will be implemented in such a fashion that the existing United States-flag service in the Iceland trade will not be disadvantaged. In other words, the United States-flag presence and

the maritime employment will be maintained just as if the 1904 Act were fully in effect in the Iceland trade.¹⁸

Similarly, on the question as to how the treaty would affect Rainbow, the only U.S.-flag carrier on that route, Senator Mathias asked and Mr. Derwinski replied:

Senator MATHIAS. What about the current American flag carrier? Are there any plans in effect to save harmless the *current cargo carrier* that is now carrying supplies to the [U.S.] military base in Iceland?

DERWINSKI. My understanding is that the current carrier has been involved in a number of discussions with appropriate authorities, and despite the fact that we could not provide, obviously, within the treaty for specific protection for an entity, we did have in mind at all times the need to *protect the interests of the current carrier* (emphasis added).¹⁹

Relying in part upon these representations, the Senate Foreign Relations Committee recommended that the Senate ratify the treaty. In fact, the Committee stated in its report to the full Senate that advice and consent were being conditioned upon three assurances given by the Departments of State and Defense, one of them being that the treaty will be implemented in such a way that the existing United States-flag service in Iceland trade would not be disadvantaged as a result of the Treaty. The Committee received these assurances at its hearing and recommends advice and consent on that basis only.²⁰

Two days after the Committee Report was issued, and on the day the Treaty was ratified, Senator Pell repeated this condition of ratification on the Senate floor.²¹

This history clearly shows that the Senate was concerned about protecting the interests of the current American carrier;²² that to give meaning to that concern, it intended the treaty to provide that protection without further requirements; and that the Executive Branch agreed.

By even raising the standing issue, the Navy is adding to its pattern of false representations discussed in Part I, *supra*. Having assured the Senate that the treaty would not disadvantage the "existing United States flag service . . . [and that] United States presence and the maritime employment will be maintained" as under the Cargo Preference Act, the Navy is now arguing through its counsel that this assurance is meaningless unless new implementing legislation is first enacted. No mention appears to have ever been made to the Senate or its committee regarding implementing legislation or the need therefor, and the Administration has never proposed such legislation.

The Court concludes that the Iceland treaty is self-executing and that Rainbow and the Union have standing to bring this action.

As to the other threshold defenses advanced by the Navy, they either fall away upon the determination that the treaty is self-executing or they are otherwise unfounded. The Navy protests that the Court lacks subject matter jurisdiction over Rainbow's claims, but according to 28 U.S.C. § 1331, "(t)he district courts shall have original jurisdiction of all civil actions arising under . . . treaties of the United

States." See also U.S. Const. Art. VI Cl. 2. And it is of course well established that the review provision of the Administrative Procedure Act, 5 U.S.C. § 502, waives sovereign immunity for injunction actions.²³

IV

The Court now turns to the merits of Rainbow's complaint and its request for a preliminary injunction.²⁴ Rainbow alleges that the 1988 Navy procurement for the United States-Iceland route is contrary to the language and the purposes of the memorandum of understanding. The Navy's answer is that two competitions between American and Icelandic shippers are permitted by the treaty and MOU—one competition for 65% of the cargo, and a second competition for 35% of the cargo. In the opinion of the Court, that construction of the treaty and the MOU is untenable.

The language of the MOU²⁵ is straightforward and unmistakable:²⁶

... Each competition shall result in contract awards to both an Icelandic shipping company and a United States flag carrier such that not to exceed 65 percent of the cargo shall be carried by the lowest bidder and the remainder shall be carried by the next lowest bidder of the other country. . . (emphasis added).

Thus, according to the MOU, for any given shipment period, there is to be a single competition dealing with 100% of the cargo. At each such competition, the Navy awards up to 65% of the cargo to the lowest bidder—a shipper from either country—and the remainder, 35% of the cargo or more²⁷ to the next lowest bidder—a shipper from the other country.

However, under the Navy's construction of the MUO, and under the awards procedure it contemplates, the "next lowest bidder" will never receive any portion of the

¹⁶ See *Warin v. Director, Department of Treasury*, 672 F.2d 590, 591-92 (6th Cir. 1982); *Neal v. Secretary of Navy*, 639 F.2d 1029, 1036-37 (3d Cir. 1981); *Jaffee v. U.S.*, 592 F.2d 712, 717-719 (3d Cir. 1979); *Beller v. Middendorf*, 632 F.2d 788, 796-97, 799 (9th Cir. 1980).

¹⁷ To prevail on a motion for a preliminary injunction, Rainbow must show (1) that it has a substantial likelihood of prevailing on the merits; (2) that it will be irreparably harmed if an injunction is not granted; (3) that the interests of all affected parties are properly balanced by the said relief; and (4) that the public interest is clearly served by the issuance of an injunction. See *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.* 559 F.2d 841 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 291 (D.C. Cir. 1958).

¹⁸ An MOU is an international executive agreement which must be interpreted according to the principles applicable to treaties. *Air Canada v. U.S. Department of Transportation*, No. 87-1300, slip op. at 6 (D.C. Cir. Apr. 15, 1988). The general rule in interpreting treaties is:

The clear import of treaty language controls unless "application of the words of the treaty according to their obvious meaning effects a result inconsistent with the intent or expectations of its signatories."

Sumitomo Shoji America, Inc. v. Avagliano, 457 U.S. 176, 180 (1982), quoting *Maximov v. United States*, 373 U.S. 49, 54 (1963).

¹⁹ "An international agreement is to be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its objects and purposes." Restatement of the Law (Second) Foreign Relations Law of the United States (Revised), Tentative Draft No. 6 (1985), § 325(1). This same rule of interpretation is prescribed by the Vienna Convention of the Law of Treaties Article 31(1). S. Exec. L. 92d Cong., 1st Sess. (1971), 8 I.L.M. 679. As the State Department has noted, "the Convention is already recognized as the authoritative guide to current treaty law and practice." *Id.*

²⁰ More than 35% of the cargo will be so awarded if the lowest bidder takes less than 65%.

¹⁴ As Article I is written, the United States may not qualify or modify the obligations placed upon it by the treaty through legislation or administrative regulation. See *British Caledonian Airways Ltd. v. Bond*, 665 F.2d 1153, 1161 (1981).

¹⁵ The Department of Justice disavowed in court the representations made by the Navy and the Department of State to the Senate during treaty ratification proceedings as merely "precatory" and "non-binding." Hearing on Rainbow's motion for a temporary restraining order, April 15, 1988. This position is disturbing since it undercuts the foundation upon which Senate ratification was based, at least in part. As Professor Henkin recently testified:

The President can only make a treaty that means what the Senate understood the treaty to mean when the Senate gave its consent. . . . The Senate's understanding of the treaty to which its consent is binding on the President. He can make the treaty only as so understood. He cannot make the treaty and insist that it means something else. . . . The Constitution clearly implies [] that it is what the Senate understands the treaty to mean—that is what the treaty means for purposes of its consent.

¹⁸ *United States-Icelandic Treaty on the Carriage of Military Cargo: Hearings on the Treaty Before the Committee on Foreign Relations*, 99th Cong., 2nd Sess., p. 9 (1986).

¹⁹ *Id.* at 11, report to the full Senate that S. Rep. No. 27, *supra*, note 5.

²⁰ 132 Cong. Rec. S15661 (daily ed. October 8, 1986).

²¹ As this discussion illustrates, Rainbow has standing since it could hardly be more directly within the "zone of interests" protected by the treaty.

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contract. That result is achieved by having two competitions rather than one: once the lowest bidder from one country wins the contract for 65% of the cargo, instead of the remainder going to the next lowest bidder, a second competition is held for that remainder at which, again, the lowest bidder prevails. With respect to neither competition will the "next lowest bidder" even be considered; it would have to be the lowest bidder in the second competition to receive any portion of the contract.²⁸ The language in the MOU referring to the "next lowest bidder" is simply disregarded and given no effect.

The language of the MOU—which the Court finds to be unambiguous in its support of Rainbow's position—is further buttressed by the construction placed thereon by the Secretary of Defense himself. Secretary Carlucci wrote as follows on March 25, 1988 to Senator Lugar of Indiana, a member of the Committee on Foreign Relations:²⁹

The treaty and implementing memorandum of understanding foster competition between U.S. and Icelandic flag carriers for 100 percent of the cargo transported by sea between Iceland and the United States for purposes of the 1951 Defense Agreement between the two countries. The overall low bidder is awarded 65 percent of the cargo and the low bidder of the other country is awarded the remaining 35 percent. This is how the existing contracts were awarded.

Thus, the Secretary concluded that the MOU requires a single competition in which the contestants bid for 100% of the cargo, and that the "overall low bidder" wins a contract to carry 65% of the cargo, while the "remaining 35 percent" goes to the low bidder from the other country—precisely as Rainbow asserts. Any still remaining doubt is allayed by the Secretary's reference to a continuation of the method by which the existing contracts were awarded. Those (1987) contracts were, of course, awarded precisely on the basis of the interpretation of the MOU urged upon the Court by Rainbow.

Rainbow and its seamen have an extremely strong likelihood of success on the merits. These parties also stand to be irreparably harmed if the procurement is not enjoined. As concerns Rainbow, its business would in all likelihood have to be shut down; as regards the Union, its members employed by Rainbow will lose their jobs. Indeed, the Court is persuaded, on the basis of the evidence before it, that Rainbow cannot secure alternate shipping business and that, in view of the depressed nature of the American merchant marine, its seamen are unlikely to find employment.

By issuing a preliminary injunction, the Court preserves the status quo between the parties.³⁰ And, in view of the existence of present arrangements, there will be no interruption of the delivery of the cargo and thus no injury to the public interest or to the defendants.

²⁸ Rainbow claims that, for a variety of reasons, it will not be able to compete effectively under the Navy's two-competition system, and the Court is persuaded on the basis of the evidence available at this juncture, that this representation is correct.

²⁹ Secretary Carlucci's letter was attached to the Union's motion for preliminary injunction.

³⁰ Rainbow will continue to carry its share of the cargo under the 1987 procurement, and so will Eimskip, the Icelandic carrier. The Court takes no position on the issue of how Eimskip should be paid for transporting its 65% of the cargo during the period of this injunction. That is a matter for resolution between the Navy and Eimskip.

VI

As indicated, the recent events connected with implementation of the treaty represented the third time that the Navy has attempted to eliminate Rainbow, a small American-flag shipper, from the Icelandic trade. In 1985, the Navy announced and assured the Court that Rainbow had to be disqualified from a cargo preference because its rates were excessive. Upon examination, it was found that this was untrue and that the real reason for the attempted disqualification was the Department of State's plan to permit Icelandic shippers to regain their monopoly with respect to that trade. In 1986, the Navy assured the Court that Rainbow's services could be dispensed with because military aircraft which were flying by way of Iceland anyway could perform Rainbow's role. Upon inquiry, it became apparent that, contrary to the Navy's assurances and contrary to binding regulations, military aircraft were capable of taking on that role only if they were diverted from their normal duties.

Now the Navy is attempting to eliminate Rainbow once again, this time under the treaty with Iceland. The present effort is as disingenuous as the other two. The construction of the memorandum of understanding adopted by the Navy is contrary to the ordinary meaning of the language contained in that document. It is contrary also to the assurances given by Mr. Derwinski and Rear Admiral Pictot, Jr., to the Senate Committee on Foreign Relations when the treaty was before that committee for ratification. And it is contrary, finally, to an interpretation of the treaty announced just two months ago by Secretary of Defense Carlucci himself.

The Court understands that Iceland is a staunch ally of the United States, and it sympathizes with the efforts of our government to satisfy the demands of that nation. But this may not be done at the expense of one of the few remaining American-flag vessels of our merchant marine and the few remaining American seamen who found employment there. More particularly, this may not be done in violation of American law, of the language and purpose of a treaty, and of the solemn representations made to the United States Senate in connection with the ratification of that treaty.

The Court has accordingly, once again, enjoined the Navy's attempt to put Rainbow out of business.

May 17, 1988.

HAROLD H. GREEN,
U.S. District Judge.

Mr. SPECTER. Mr. President, I would like to point out that this is a very extraordinary case that came to the court on three occasions. Without going into it in great length, as summarized by Judge Green on page 13 of the slip opinion, that the Navy hearing was adding to its pattern of false representations which I think is a very terrible factor in delimiting the treaty interpretation issue.

I would now like to direct a question to the distinguished Senator from Georgia, Senator NUNN, and that relates to the criteria reaching common understandings because this is important in light of what we are doing here today and referring to page 90 of the committee report. The Sofaer doctrine is quoted as saying that there will be an understanding where first, "generally understood" by the Senate; second, "clearly intended" by the

Senate; and third, "relied upon" by the Senate.

I now refer to testimony Senator NUNN gave according to the record before the Foreign Relations Committee, page 144, where he said, referring to the Culvahouse letter, "As a matter of domestic law; however, the President is bound by shared interpretations which were both authoritatively communicated to the Senate by the Executive, clearly intended, generally understood, and relied upon by the Senate in its advice and consent to ratification."

Then the Senator makes the statement, "That sentence I agree with completely." And my question is: Does the Senator concur that those criteria are indispensable in order to have the application of an understanding of the Senate?

Mr. NUNN. I will say to the Senator it depends on how one interprets those words. I would certainly not interpret them the way I am afraid the Senator from Pennsylvania interpreted those words.

When the administration comes up and testifies before a committee of the Senate, the Senate has received that information and has relied on that information. I do not think the Senator has to jump up and down in the Foreign Relations Committee and say, "Oh, I relied on that, you told us that and I rely on that."

No; I do not think that. I think when the testimony comes in, Senators can sit there calmly and even snooze off if they like to—and not many of our colleagues do that—they can even snooze off and if the Secretary of State, or another authoritative witness, makes a statement, then the Senate, through its committee, has relied—

Mr. SPECTER. I ask the Senator to be as brief as he can be. I am not suggesting jumping up and down here. I am talking about criteria as a legal matter and there are three conditions. Generally understood, clearly intended, and relied upon. And it is a matter of what the facts show.

But I take it the Senator does agree that those are the three criteria which establish the Senate's understanding if they are met.

Mr. NUNN. I do not agree with that because I know where the Senator is coming from. He is coming from the point of view the Senate has to understand, we have to prove that we understood, we have to show that we relied on. I do not agree that you have to demonstrate that we relied on testimony, other than by showing that we received authoritative testimony. If you had to prove that we came out here on the floor with everything the Senate Foreign Relations Committee received, with everything the Armed Services Committee received, and everything the Intelligence Committee received, that we put it in the record, and that we said we relied on it and understood

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it, that would be an exercise in absolute absurdity, and I think it would render the process unworkable.

So I would not agree that those words should be added to simply the words "authoritative testimony."

I am glad the Senator has given me the opportunity to make that perfectly clear.

Mr. SPECTER. This Senator is not coming from anywhere. I understand the answer of the distinguished Senator from Georgia. He is now saying he disavows what he testified to before the Foreign Relations Committee, where he said that sentence there, "I agree with completely." He is now saying he does not agree with it at all.

Mr. NUNN. If the Senator would go right down the page on that same transcript, he will find that I went on and say, and I quote from that statement:

We have always thought that it [the understanding of the executive branch testimony relied upon by the Senate] was through the committee process. If we can simply declare that the U.S. Senate works through its committees, which we all know we do, and that matters that have been received, authoritative testimony received before the committees is deemed to have been received by the entire Senate and deemed to have been focused on by the whole Senate, then it seems to me that we could go a long way.

If the Senator has the whole page of that transcript instead of one part of it then he will see there was a qualification and I made it clear in that hearing what I was talking about.

Mr. SPECTER. Well, I have looked at the entire page. But the three references which track Sofaer directly are "clearly intended, generally understood, and relied upon by the Senate in its advice and consent to ratification." The Senator from Georgia said that he agreed with that sentence there and I agree with him completely.

Mr. NUNN. I would say, if the Senator would yield, I do agree with that completely, provided it is understood when an authoritative witness comes from the administration and testifies before a committee, the Senate should be deemed to have relied on that testimony in its deliberations.

Mr. SPECTER. Well, I thank the Senator. When he says he agrees with it completely, under that proviso, I accept that.

I had earlier asked the distinguished majority leader the question which I have since privately discussed with the Senator from Georgia relating to what the Senator from Georgia said at a committee hearing—that the Soviets were bound by what they heard in ratification proceedings, where the Senator from Georgia was quoted as saying that:

If the Soviets remain silent on points of interpretation presented by executive branch witnesses, then I believe the U.S. Senate, as well as our Government, can reasonably believe and contend that silence connotes consent to those interpretations.

It seems to this Senator that this is where the Biden, now the Byrd, condition is going, and it is a remarkable change in international law treaty interpretation, in light of the statements by the Supreme Court of the United States in *Societe versus U.S. District Court*, decided on June 15 of last year, referring to the negotiations and the practical construction adopted by the parties, and the decision back in 1942 on the *Choctaw Nation* case, and as those principles are picked up in *Copeland versus United States*, which says this:

Most important, foreign governments dealing with us must rely upon the official instruments of ratification as an expression of the full intent of the Government of the United States, precisely as we expect from foreign governments.

Now, my question to the Senator from Georgia is: Do you have any authority at all that there is any weight at all to be attached to bind a foreign nation from what goes on in a domestic ratification proceedings?

Mr. NUNN. I would say to the Senator—I do not have my exact words and I would like to get those—but what I intended to convey was—

Mr. SPECTER. Let me make them available to you. I have them right here.

Mr. NUNN. If we have an open and public hearing in which statements relating to a treaty are made by the executive branch of Government, and if the Soviet Union disagrees with those statements, then I think they have some duty to come forward and let the executive branch know that they do not agree with that interpretation.

Now, I would not go so far as to say they are bound. I think that would be overstating it. If I stated it as the Senator said, then I would say that was going too far.

I do believe there is a strong argument to be made that when one party publicly and openly cites their interpretation of a treaty in a way that is fundamentally different from the other party's understanding, the other party, knowing of that, if they know of it, has some affirmative duty to make that known. I would not go so far as to say they are bound, though. I am told that I did not say that.

Mr. SPECTER. I read what the Senator said.

Mr. NUNN. If I did, I went too far.

Mr. SPECTER. Do you have any authority at all for the proposition that a foreign government has to pay any attention at all to what goes on in a ratification proceedings and has any duty at all to make any response at all; any authority for that?

Mr. NUNN. I think basic contract law would tell you that when one party, before a contract has been completely entered into by the ratification thereof or formal procedure, hears the other party misinterpret it, there is some obligation for that party to correct it, and that silence does have some evidentiary effect on the inter-

pretation of that contract. That is basic contract law and basic common sense.

Mr. SPECTER. No court opinion, no judicial opinion, just general interpretation.

Mr. NUNN. Does the Senator have any court opinion that says that is not?

Mr. SPECTER. Yes, I do. I would be glad to yield for a question on that.

The *Copeland versus United States* case says that; *Societe* says it is negotiations which govern, as does the *Choctaw Indian* case.

Mr. President, I inquire how much time I have remaining.

The PRESIDING OFFICER. One minute and 45 seconds.

Mr. SPECTER. I have quite a few more questions, Mr. President. I will seek to have an amendment which I will add to bring these issues up in a time sequence when we have more than the limited time. On the questions which I propounded, we did not have a time for discussion with the distinguished majority leader.

Mr. President, in conclusion, in the minute that I have left, I think the arguments here have disclosed conclusively that the Byrd condition makes major modifications in international law and treaty interpretation by disregarding the negotiating record deemed immaterial under the committee report—

Mr. WILSON. The Senator has 6 minutes.

Mr. SPECTER. Six minutes?

Well, in light of having 6 minutes, I say to Senator NUNN, I have some more questions.

I turn to an exchange which you and I had before the joint hearings of the Foreign Relations Committee and Judiciary Committee. I alerted you on this a few minutes ago, where we had this exchange. I think that the discussion which we had early in 1987 really capsulates the problems which we have here on the so-called two treaty doctrine, which this Senator sees, where we have the negotiations with the Soviet Union on one treaty and we have a general understanding with the Senate on another.

It may be that under the Biden condition, as restated by the Byrd condition, that the understanding may arise in some implicit way, nebulous way, as the committee report spells out. I had asked you at that time what happens where, at page 72, the U.S. position to which the Senate has concurred is at variance with what the executive and the Soviets agreed to. Your answer was:

I think it would be a first-class, royal mess if that proves to be the case.

What happens is, as, and when we get around to debating narrow versus broad, and the wisdom of the distinguished Senator from South Carolina is not accepted and we come to the conclusion that the Soviets rejected the narrow interpretation when we

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tabled it and the subsequent practices of the parties showed that there was a broad interpretation? We do not have time now to go into all the records. I am asking you to assume my hypothetical.

Mr. NUNN. I already fundamentally disagree with every assumption you have made, so it is hard for me to answer the question.

Mr. SPECTER. Well, then, I will not ask the question. I will just make the argument.

The argument that I will make is that, as this Senator reads the negotiating record—and I have read it ad nauseam—there is solid evidence that the Soviets rejected the narrow interpretation and then, when it came into their interest to accept the narrow interpretation, they did so.

The ABM Treaty, if, as and when we complete the hearings, which have not yet been completed, will show that we have two treaties, much to the disadvantage of the United States. If the ABM Treaty says we have the narrow interpretation, so be it, Mr. President. But where it does not say it and where there is an ambiguity on the record, then the United States ought not to be disadvantaged to spend billion of dollars more in tests and to have tests delayed in that respect.

Mr. NUNN. Will the Senator yield? I promise just 30 seconds on this point.

Mr. SPECTER. I ask unanimous consent that we have the additional time for what the Senator wishes to ask.

Mr. BYRD. Mr. President, how much additional time does the Senator want?

Mr. SPECTER. How much time Senator NUNN uses.

Mr. NUNN. I withdraw the request.

Mr. BYRD. Mr. President, I ask unanimous consent that there be 3 additional minutes to the distinguished Senator from Pennsylvania and 3 minutes to the distinguished Senator from Maine.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. I thank the majority leader.

Mr. NUNN. Mr. President, I would say on the question of where there are two different interpretations—and I think the executive branch would have really made a very serious error if that happened, but if it did—Charles Cooper, an Assistant Attorney General, has written an opinion on that. He is an Assistant Attorney General in this administration. He states in that opinion:

Accordingly, in such extreme cases, we would have little doubt that, as a matter of domestic law, the courts would construe the treaty as presented to and accepted by the Senate, even if as a matter of international law the treaty might have a different meaning.

Mr. SPECTER. Well, Mr. President, I think that quotation just cited by the Senator from Georgia illustrates the point that you have two treaties.

You have a treaty negotiated by the executive branch with the Soviet Union and you have a treaty which was apparently implicitly understood by the Senate. If and when we get around to debating the ABM Treaty and go through the negotiating record and finish those hearings, this Senator submits that the evidence will be conclusive that there is at least ambiguity and that what we are doing here today with the Biden condition as amended by the Byrd condition is strangling the United States. We are holding our Government to a tougher standard than the standard which is binding on the Soviet Union.

Mr. President, when this record is reread in a later day, when there are not the partisan passions present today and where there is not the rush to judgment, I submit there will be a different conclusion reached.

We have established a record, regardless of the vote, and I am not so naive as to think that the Biden condition will not prevail here today. We have established a record which I think is an accurate statement of the law to which this body will return in a more deliberate fashion at a later date. Much like the decision on Plessy versus Ferguson in 1896 when one sole Supreme Court Justice stood in dissent, later adopted as the law of the land. But in calmer reflection, this record is replete with legal principles that are being violated, on international law, interpretation of treaties, and violated on U.S. constitutional interpretation.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Maine has 3 minutes.

Mr. COHEN. Mr. President, let me just offer a personal view of why we are here discussing this matter right now. It has to do with the interpretation of the ABM Treaty. This is no doubt about it, just listening to the debate that has been taking place.

It is my personal judgment that the administration found itself bumping up against the restrictions of the ABM Treaty and, rather than give notice and opt out of that treaty, they sent Judge Sofaer and others back through the records, perusing through the records, and they came up with a different interpretation. Whether you call it an original interpretation or a reinterpretation is a matter of some dispute here.

But, in essence, what they are saying is: The Nixon administration was wrong, the Ford administration was wrong, and the Carter administration was wrong; and that we now have the correct interpretation.

Well, that is subject to debate. I do not accept that particular view, but that view is shared by a number of my colleagues on this side of the aisle.

But what we have tried to do in working out this particular compromise is to accommodate that kind of dispute. Paragraph 4 added to the

Byrd amendment was designed specifically to defuse the issue. There are those on this side of the aisle who feel that the Byrd-Biden-Nunn-et al. amendment really is designed to give leverage to the Senate to use and whack the Reagan administration on its interpretation of the ABM Treaty.

Senator NUNN has indicated he does not seek to use this particular amendment to achieve that end. The purpose of including paragraph 4—and this was negotiated in a bipartisan fashion, Senator DOLE took part, we had Senator Baker here, we had others—was to try to break this logjam.

It seems to me that paragraph 4 ought to at least allow some opportunity for those who disagree with the so-called narrow interpretation to fight that particular battle at another time. I would hope that the Members who are coming to the floor to vote on the Byrd amendment would take into account the fact that we have tried to strike a balance. Where there has been a clear representation on a provision of a treaty given by an authoritative representative on behalf of the administration, that ought to be binding. That ought to be binding. A future administration or the same administration wanting to alter the common understanding ought to be forced to come back to the Senate to say we need your consent to this.

Where there is no meeting of the minds, where there is no common understanding, where there is ambiguity, that is another matter. That is up to a future determination. That is a battle to be fought out either, certainly in the political forum, or in a legal one.

But I submit to you that the Byrd amendment as modified is a compromise that is responsible, it is fairminded and it ought to be adopted by the Senate.

I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. LEAHY). The Senator's time has expired.

Mr. BYRD. Has all time expired?

The PRESIDING OFFICER. The Senator from Pennsylvania has 3 minutes and 42 seconds remaining.

The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, the distinguished Senator from Maine makes a persuasive argument, but the difficulty with the argument is the context of the origin of the Biden condition, and then the Byrd condition. The condition is backed by some 23 pages of legal analysis in the committee report which is totally flawed.

The analysis in the committee report refers repetitively to the ABM Treaty. The Biden condition was inserted into the committee report and is on the floor today because of concerns which had arisen as a result of the ABM Treaty.

The interpretation of the board interpretation came about at a time

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after the National Security Council and McFarlane had made a statement about the intent to have broad tests and the motivation was suspect at that time. But I submit that a close reading of the record, the negotiating record and the subsequent practice of the parties, supports the broad interpretation.

Where the committee report concedes that it is really unnecessary to have this condition at all and where it treats international law on treaty interpretation and constitutional law on treaty ratification and such, I would urge the Members of this body to reject the condition.

I thank the body, I thank the Chair, and if there is any time left, I yield the remainder.

Mr. DIXON. Mr. President, what is at stake here is of fundamental importance. The committee condition affirms the Senate's constitutional role in the treaty-making process.

The treaty power of the Senate is derived directly from the Constitution. The Constitution's treaty clause states that the President "shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur."

This language is very clear. The Senate is provided an essential role in the treaty-making process. The Executive cannot act to make a treaty with a foreign country without the Senate. There is no treaty until the Senate consents to it.

The traditional understanding of this process is that after the Executive negotiates a treaty, it then presents the proposed treaty and explains it to the Senate. On that basis, the Senate then gives consent for the treaty to be ratified.

For the Senate's role to be meaningful, the Executive's authoritative representations of a treaty's meaning must be binding. These representations are a fundamental component of the common understanding between the Executive and the Senate on the meaning of the treaty. The Senate's consent decision is based on this common understanding. Therefore, the importance of the Senate's role in the treaty-making process is based on the principle that the Executive will use the same interpretation to carry out the treaty that it presented to the Senate. Without this understanding, the role of the Senate in making treaties is nullified.

This is exactly what the Sofaer doctrine, asserted by this administration, threatens to do. The Sofaer doctrine claims that what the Senate is told in the process of consenting to a treaty is not in itself binding in determining the subsequent obligations of the Executive in carrying out the treaty. In other words, this doctrine asserts that the Executive can come before the Senate, make authoritative representations as to the meaning of a provision of a treaty, clearly stated and put

on the record, and then, after ratification, say that the representation can be ignored.

In testimony before a joint Foreign Relations-Judiciary hearing, Judge Sofaer went so far as to say: "When the Senate gives its advice and consent to a treaty, it is to the treaty that was made, irrespective of the explanation the Senate was provided."

Accordingly, the Executive would have the power to unilaterally reinterpret a treaty. The practical effect of the Sofaer doctrine would be to make the Senate's role in the treaty process meaningless.

In my view, the Sofaer doctrine is an assertion of power by the Executive that has no basis in the treaty clause of the Constitution. This committee condition is no more than the Senate's refusal to concede to the President a power which he is not granted by the Constitution, and which no previous Executive has ever asserted.

If the Senate were to acquiesce to the Sofaer doctrine, the Senate would undermine its own role in the treaty-making process. I want to be absolutely clear on this point: The Senate would become irrelevant to the treaty-making process. The only way for the Senate to prevent becoming irrelevant would be to attach elaborate and numerous conditions to treaties in order to have the Senate's understanding become an integral and explicit part of the ratification documents. I believe that such a procedure would so overburden our treaty-making process that it would be unable to effectively function.

Mr. President, this condition is based on sound constitutional logic, and will assure that the Senate's role in treaty-making is maintained. It will prevent the Executive from acting unilaterally, without the consent of the Senate, to reinterpret this treaty.

What this committee condition does is really rather limited. We are not insisting that ambiguities, and issues that did not arise during the ratification process, be resolved in the manner Congress sees them at the moment.

We are saying that ratified treaties are the law of the land, and because treaties are the law of the land, the President may not unilaterally change them. That is the point which is fundamentally important.

The committee condition is not attempting to supplant the power of the President in the treaty process, it is simply reaffirming the proper role of the Senate.

The issue here is not partisanship, it is preservation of the power of the Senate defined by the Constitution. The question is fundamental: Should the Senate have a meaningful role in the treaty-making process? The answer provided, in no uncertain terms by the Constitution, is "yes." I agree.

Therefore, I urge my colleagues to support this condition.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. I wonder if I may proceed for 5 minutes.

Mr. BYRD. Mr. President, I ask unanimous consent the distinguished Republican leader may have 5 minutes and I may have 3.

The PRESIDING OFFICER. Is there objection? Hearing none, the Senator from Kansas has 5 minutes and the Senator from West Virginia, 3.

Mr. DOLE. Mr. President, let me say at the outset that I am not an expert, as many are in this Chamber, on the interpretation issue. Obviously honest men can have honest disagreements. There are probably still some disagreements in this Chamber.

I want to applaud those who have taken the time, as many have on each side of the aisle, to really get into this issue, read the cases, understand it fully. We did not do that in the last several hours but we have had a lot of meetings. I certainly want to commend my friend from Pennsylvania, Senator SPECTER, who has been working night and day on this issue for the past several months.

As I have discovered over the years, there are about three ways in this body to deal with disagreements.

We can argue and argue and argue, ad infinitum; and produce little but an especially fat edition of the CONGRESSIONAL RECORD. Or we can put down our honest differences in pretty stark form, and then vote—up or down, winner take all.

Or, finally, we can look for compromise. It seemed to me after several hours of meetings that was our only real choice, if we wanted to get this treaty done, without a truly dangerous and damaging amendment attached to it.

I want to correct any misunderstanding. The White House is not supporting this compromise. There may have been some indication that it is the case. They are not up here opposing it actively but they are not supporting it. We were pleased when Senator BAKER came in and made the case for the administration. They wanted some changes. They wanted some changes we did not give. Some of the changes were made: compromise.

So I think if I had my way this amendment would not be on this treaty. I do not think it even belongs here. But I know who is in the majority and I know where the votes are and I knew that the majority leader felt strongly about this issue on one side. Many others felt strongly on the other side.

Let me say up front: I don't think this treaty is the place to deal with this issue at all. We have differences on the ABM issue, and on the broader constitutional question—we should have agreed to fight those out, or work those out, without putting this very important nuclear arms reduction agreement in jeopardy at all.

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That would have been the best course, by far. But it just was not a real option, because of the strong determination of our opponents to put their amendment on this treaty; and because they may well have had the votes to do what they wanted.

So the simple facts are: We were going to vote on this issue on this treaty; and—on the underlying amendment standing alone—we were probably going to lose.

If we invoked cloture, we would have acted on it. Had we not invoked cloture, we would do what we are doing now. Sooner or later, we were going to act on this amendment. And that is what we are doing now.

And so we did the best we could. The result, to me personally, is far from the best solution; again, I suggest I am not the constitutional scholar. But to me, sincerely, it is the best we can achieve.

We ended up with a better result than we started with. The majority leader and others on that side were willing to make some concessions. I think one key provision and one addition was what we call subsection (4). It was an initiative of the distinguished Senator from Maine, Senator COHEN.

That provision makes clear, at least it does to me, that the decision we are making on this treaty applies solely to this treaty and does not prejudice our position on the ABM interpretation issue at all.

I thank the Senator from Maine for his contribution.

It is my understanding, based on the conversations—and I do not believe I missed much of any of the meetings, that was pretty well the feeling of most participants, Republicans and Democrats—that that was the effect of that subsection (4).

Another major improvement that was made during our negotiations was the reaffirmation of subsection (2), that treaty interpretation first and foremost depends upon the text of the treaty, and the provision of the resolution of ratification. That is a key reaffirmation of a very important principle and, again, we made a slight change today by numbering one first, one second. We argued whether it would be first, second, primarily, secondarily, whatever. We ended up first and second.

On the bottom lines, what is going to prevail in the final analysis, the Senator from Pennsylvania made clear time after time, is the Constitution.

Mr. President, may I have 2 additional minutes?

Mr. BYRD. Mr. President, I ask for the distinguished Senator from Kansas—Russell, KS—to have at least 2 additional minutes.

The PRESIDING OFFICER. The Senator from Russell, KS, is recognized for 2 additional minutes.

Mr. DOLE. We have two Senators from Russell, KS.

Mr. BYRD. Right now it is this one. [Laughter.]

Mr. DOLE. I do not think we are going to have any impact on the Constitution whatever happens to this amendment. I do believe we are making a record—I am not making a record—but a record has been made by those who are experts in this area. We have had a number of Members participate in this particular area, and not all who contributed will support the final product.

The Senator from California, Senator WILSON, was there and was very helpful. He is not going to vote for the final product, but I am.

I indicated to the majority leader it seemed to me that we had made some progress, and the question is whether we are going to come out here and just have a partisan bloodletting and go back to the original amendment, or whether we are going to try to modify it the best we can and try to get some bipartisan support.

I want to say one special word about the Senator who has played a lead role in this whole process, the distinguished Senator from Delaware [Mr. BIDEN]. While he happened to be on the other side of this issue, all of us regret his absence, and we look forward to his speedy return.

Mr. President, this has been serious business. This is a very, very important issue. I think this compromise will permit us to avoid a collision on the first and open the door to finishing the work on the second. So we can now provide the President a finished treaty, and I hope, as I said to the majority leader just a few moments ago, as he said to me I guess, maybe the way things are moving, continue to move, we may complete action maybe as early as 10 o'clock this evening. That is what the work behind the U.S. Senate is all about.

I am pleased that we have come this far, and I am pleased that my distinguished colleague from Alaska, Senator STEVENS, will also be supporting the compliments.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, in this Senator's view, the preservation of the institutional role of this Senate in the making of treaties is more important than this treaty itself because there are going to be other treaties long after all of us have shuffled off this mortal coil. I want this Senate's role under this Constitution to be forever uneroded. That is my main interest in this amendment.

It does not make any difference as to what party is in power in the White House. This is not a partisan amendment, as far as I am concerned. After January the 20th of next year, if we have a Democratic President, I do not want even that President to be able to reinterpret this treaty. You will then see some fast shuffling of feet on the part of some of those today who have stood on the other side to oppose this amendment. They will be on the other

side of the issue then, but this Senator will be right here where he stands today.

Presidents will come and go, but the Senate will remain, and the Constitution will remain.

Mr. President, this amendment provides that this treaty will be interpreted on the basis of the common understanding, the shared understanding that is reached between the Senate and the President, through his representatives, at the time the Senate gave its advice and consent.

How will we interpret the treaty? First, by the text. We will go to the four corners of the treaty itself; then we will go to the resolution of ratification because this Senate does not vote on any treaty. It votes on the resolution of ratification. It may amend the treaty, but it can vote only on the resolution of ratification. That is where the Senate speaks. Then it goes to the authoritative statements and representations of those who speak for the administration in power.

If there is an explanation to be desired, if there is something to be clarified and it is not in the text of the treaty, we have to depend upon those who represent the President to explain what was negotiated.

Mr. President, if we cannot believe them, to whom can we turn?

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BYRD. I ask for 3 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, we are today making this treaty binding on this administration after the treaty is ratified and binding on the next administration and on and on.

Mr. President, the Senate must be able to rely upon the authoritative statements of those representing the administration that made the treaty, else the words "advice and consent" in the Constitution amount to nothing because the treaty's meaning will depend on who is in the White House at a given moment.

This Senate has an equal role with the President in the making of treaties. Those words were not written into the Constitution by the framers to be only symbolic words. They were to have meaning, and I am not willing to surrender that Senate role to any President of any party. I am for this institution first, last, and always, insofar as its role under the Constitution is concerned.

It would seem to me that the administration that made this treaty would want the next administration and the next administration thereafter to be bound by the treaty that is made by this administration. That is what I am fighting for today, not so much as to what administration or what party, but rather that this Senate be able to

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rely upon administration witnesses who come before it to explain the things that it cannot understand about the treaty and about which it needs clarification.

I want this Senate to be able to depend upon those of any administration who come here to represent that administration as to the meaning or the interpretation of words or phrases or terms in a treaty. I am not for any erosion of that power.

It shakes me a little bit, Mr. President, when Senators reduce the Constitutional role of this institution to partisan terms. I believe that every Senator first, last, and always ought to stand for this institution and its role under the Constitution, and we ought to carefully and zealously guard that role against any erosion from any quarter, from any party. That is precisely my interest in this amendment. I want to see a better treaty, and this treaty is a better treaty by virtue of this amendment because once the Senate has given its advice and consent to this treaty and the treaty has been ratified through the proper exchange of the instruments of ratification, this treaty cannot be reinterpreted by the next administration or any subsequent administration. The Senate will have assured that.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The time of the Senator from West Virginia has expired.

Mr. BYRD. Mr. President, I talked longer than I intended. I ask for 2 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I yield to the Senator from Georgia.

Mr. NUNN. Mr. President, Ambassador Glitman committed as to any authoritative statement made before our committee which was in conflict in the Armed Services Committee as witnesses testified, they would review that, they would diligently pursue it, and before the Senate voted on final consent to ratification they would let us know if there was a conflict or any error or omission. Secretary Shultz made the same statement to the Foreign Relations Committee. So before we vote on this, hopefully tonight or tomorrow, if there are any omissions or errors in the presentation the administration made on this treaty, they have an affirmative duty to come forward and to let us know of them.

Mr. BYRD. Mr. President, I ask unanimous consent for 2 minutes so that the distinguished Republican leader and I may have an exchange.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I hope that the Senate can complete work on this treaty yet this evening. If the Senate could complete work on this treaty this evening and if we could arrive at some understanding that would allow us to dispose of the DOD

authorization bill—and this should not take long—if we could have an agreement dealing with the amendment that is presently pending to that bill, the Senate would not come in tomorrow or the next day.

Now, I wonder if the distinguished Republican leader can indicate what his feelings are in that regard, and if we can have some understanding as to how many amendments remain we may know whether or not that is achievable.

Mr. DOLE. Mr. President, if the majority leader will yield, there are 15 listed amendments, but I have to say there are probably about 8. I think some of those 8 could be disposed of within a minute or 2, but there are probably 4 that will require rollcall votes. There is an amendment by Senator HELMS, and we hope to take that up next. There was an objection on that side to a time agreement, but Senator HELMS will accept 1 hour. There is a Wilson amendment on which there will probably be a rollcall vote. There is a Wallop amendment that might require a rollcall vote, and perhaps a Pressler amendment that might require a rollcall vote. And then there would be the rollcall vote on the resolution of ratification.

I do believe that we could move very quickly on those if we can get worked out whatever problem may remain on the Helms declaration amendment. On the DOD authorization bill I know there have been Members on both sides working all afternoon in good faith to see if they could come to some resolution. There is one caveat though, and I know the majority leader's feeling about bringing up the trade bill veto. We hope that if we are going to dispose of the DOD bill, we could also vote on the veto message before we recess.

Mr. BYRD. Mr. President, I thank the distinguished Republican leader. Would he indicate, if he has the list there on those amendments—and he did indicate the substance of some of those amendments—would he please indicate the substance on all so that we all may know what type of amendments remain?

Mr. DOLE. The Helms declaration is a START-related amendment. In other words, go cautiously on START. The Quayle amendments, I would give the numbers, 2243 and 2244, which are at the desk; the Wilson amendment dealing with article XIV. That is non-circumvention. That may go into another amendment. A Wilson amendment on obligation. As I understand, the provisions which apply to us would also apply to the Soviet Union. It should not take long to dispose of that; the Wallop-Karnes amendment, which is on compliance, and I know they are working out some differences with the administration and maybe others who have problems; the Symms amendment dealing with end strength, and I think he has been discussing that with Members on that side, and a

Symms amendment dealing with cost line. I do not know what cost line is, but I think he has also been working with Senator NUNN and others; the Pressler amendments, 2101 and 2103. I do not know what they are, but those are the numbers. Then there are three Dole amendments. I am not certain if any will be offered. One is on the double negative. That is a category II amendment. It will not be offered if Senator WALLOP offers a double negative amendment; a Lugar amendment dealing with Vienna, Moscow, and Geneva. I think that amendment has been taken care of in the earlier Nunn-Warner-Lugar-Pell-Cohen-Boren-Helms amendment. And then the Specter amendment that is on treaty interpretation.

Mr. BYRD. Mr. President, the distinguished Republican leader has outlined a number of amendments, a good many of which I believe he earlier said he thought would not be called up. Is it reasonable to think that we might be able to reach a conclusion on this treaty, say, by 10 o'clock, 10:30 tonight?

Mr. DOLE. That is possible. What we are doing now, we are going back to each one of the amendments to see if Senators are actually going to offer two or one, and I should have that information available at the time we finish the rollcall vote.

Mr. BYRD. Very well.

Mr. DOLE. If I can take it up later.

Mr. BYRD. I appreciate that. I do not think there are any further amendments on this side. Mr. President, we have the cloture motion still to be voted on today unless we can find a way to vitiate it. I ask unanimous consent that the cloture motion not be voted on prior to 6:45 p.m. today.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

All time has expired.

Mr. WILSON. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from West Virginia. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON, I announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 72, nays 27, as follows:

[Rollcall Vote No. 158 Ex.]

YEAS—72

Adams	Breaux	Cochran
Baucus	Bumpers	Cohen
Bentsen	Burdick	Conrad
Bingaman	Byrd	Cranston
Boren	Chafee	D'Amato
Bradley	Chiles	Daschle

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DeConcini	Johnston	Proxmire
Dixon	Kassebaum	Pryor
Dodd	Kennedy	Raid
Dole	Kerry	Riegle
Domenici	Lautenberg	Rockefeller
Durenberger	Leahy	Sanford
Exon	Levin	Sarbanes
Ford	Lugar	Sasser
Fowler	Matsunaga	Shelby
Glenn	McConnell	Simon
Gore	Melcher	Simpson
Graham	Metzenbaum	Stafford
Harkin	Mikulski	Stennis
Hatfield	Mitchell	Stevens
Heflin	Moynihan	Tribble
Heinz	Nunn	Warner
Helms	Packwood	Weicker
Inouye	Pell	Wirth

NAYS—27

Armstrong	Hecht	Pressler
Bond	Hollings	Quayle
Boschwitz	Humphrey	Roth
Danforth	Karnes	Rudman
Evans	Kasten	Specter
Garn	McCain	Symms
Gramm	McClure	Thurmond
Grassley	Murkowski	Wallop
Hatch	Nickles	Wilson

NOT VOTING—1

Biden

So the amendment (No. 2305) was agreed to.

Mr. LUGAR. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I pay special attention and recognition to Senator BIDEN, who is not with us today in person but whose extensive work, leadership, and desires are in the measure now before us. It was he who took a leadership role last year in focusing our attention on the dimensions of the treaty interpretation issue through the hearings held jointly by the Foreign Relations and Judiciary Committees. It was he who took the lead in drafting a condition on the INF Treaty that would make necessary affirmation of constitutional principles concerning treaty interpretation.

The only difference is the addition of a corollary, the answers to which are already stated in the committee report that was, as the substitute states, more formal. This corollary, Cohen corollary, is consistent with the intent of making of the original condition. Otherwise, the substitute is in no respect the functional equivalent of the original Biden condition. The strange thing is that, in the final negotiations with the administration on the substitute, the administration found itself on several points arguing in favor of the language of the original Biden condition as being more carefully conceived than possible alternatives.

In closing, I wish to acknowledge the extensive efforts of other committee members, particularly Senators SARBANES, CRANSTON, DODD, and KERRY, and the work and determination of Senators BYRD, NUNN, and LEVIN, all

of whom made possible the moving forward of the Biden interpretation.

Mr. BYRD. Mr. President, may we have order?

The PRESIDING OFFICER. The majority leader is correct. The Senate is not in order. The Chair will not proceed until the Senate is in order.

Under the previous order, the majority leader is to be recognized, and the Chair recognizes the majority leader, but will withhold until we can get order in the Chamber.

Mr. BYRD. Mr. President, I believe that the order was for the Senate, without further debate or action, to immediately vote on the underlying committee condition to the resolution of ratification.

The PRESIDING OFFICER. The majority leader is correct. The Chair wanted to obtain order before it posed that.

Under the previous order, the question now occurs on the committee condition to the resolution of ratification, as amended. The yeas and nays have not been ordered.

The committee condition to the resolution of ratification, as amended, was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the committee condition to the resolution of ratification, as amended, was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, the vote on cloture has been suspended for an additional 30 minutes, has it not, until 6:45 p.m. today?

The PRESIDING OFFICER. The majority leader is correct—6:45.

Mr. BYRD. Mr. President, I hope we can now have some understanding as to the number of amendments that remain and whether or not we will be able to finish action on the resolution by 10 or 10:30 this evening.

Also, while I am inquiring, are there Senators who would call up amendments at this point?

Mr. President, does the distinguished Republican leader wish to respond?

Mr. DOLE. We are not quite prepared to do that. But I can say, as I did before, that Senator HELMS is ready with his START declaration amendment. He is willing to accept a 1-hour time agreement. He also has an amendment on troop withdrawal, 20 minutes, and will accept a voice vote on that.

In the order they are listed: Senator QUAYLE has two amendments, and I understand they are colloquys. Senator WILSON has two amendments and may offer one of those. He is now checking to see if it can be accepted. Senator WALLOP has one or two amendments.

Mr. WALLOP. I have one which I may offer. I do have the compliance amendment. It is not my wish to take

a lot of time. There are several people on our side who wish to speak to it. An hour equally divided, I think, would be sufficient, if we can get it without an amendment in the second degree.

Mr. DOLE. Senator SYMMS has two amendments.

Mr. SYMMS. That is correct. There are two amendments. One deals with end-strength personnel troops. The other deals with a line in the DOD budget.

It is my hope, I say to the leadership, that the Senate Armed Services Committee will look at these and possibly be able to accept them. I do not think there is any controversy. I hope they can be accepted by the committee. I do not know whether that has been worked out yet.

Mr. DOLE. There would probably be a rollcall vote if they were not accepted.

Mr. SYMMS. I announce to the majority leader and the minority leader that on the amendments that were filed yesterday, some errors have been pointed out, so I would want unanimous consent to modify the amendments, to put them in line with what we are trying to do.

I just wanted to announce that to the leader.

Mr. DOLE. Senator PRESSLER has, I believe, one amendment.

Mr. PRESSLER. Two amendments.

Mr. DOLE. He has two amendments. They will be what—20 minutes equally divided or less?

Mr. PRESSLER. I think I have to require a rollcall.

Mr. DOLE. On each?

Mr. PRESSLER. Yes.

Mr. DOLE. Then I have three amendments. I am not certain I will offer any of the amendments. I will talk to the Senator from Wyoming. If he is going to offer the double negative, I will not offer it. It is his issue.

Mr. WALLOP. Mr. President, if the Republican leader has one that is worked out, I will talk with him about it.

I will say with regard to my amendment I will ask consent that I be permitted to modify it from the verb "will" to "should."

Mr. BYRD. Mr. President, Senators are asking the Senate to modify amendments. Once cloture is invoked, no modification can take place. I would rather not agree to give Senators permission to modify amendments until we see whether or not we can get an agreement worked out because if we have to go to cloture, those amendments that are filed at the desk are the only amendments that will be in order, those that were filed in timely fashion.

Mr. DOLE. The final amendment would be a Specter amendment on treaty interpretation, 1 hour equally divided.

Again, I know that is a fairly good number. I think we are probably talk-

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ing about 3 hours of debate and probably an hour for rollcalls.

Mr. BYRD. That would be 4 hours.

Mr. DOLE. It could extend beyond that. Depending on the Senator from California who indicated to me earlier he may want to amend the amendment of the Senator from North Carolina. I am not certain how much time that will take.

Mr. BYRD. I wonder if I could get unanimous consent now. This was not the only thing we would do to assure that no amendments other than the amendments that the distinguished Republican leader has enumerated would be in order on this treaty, and that that order which I am discussing would only be valid in the event that we do not go to cloture and that we do finally settle on a time agreement, because if we do not get a time agreement and have to go to cloture, only those amendments that would qualify as being timely filed under the rule would be valid.

Mr. DOLE. I do not have any objection, except for a couple questions. First, we have had a couple of Senators indicate they want to modify their amendments. That would not affect that.

Mr. BYRD. I probably will not have any objection to their modification. But I do not want to allow modification of an amendment and then find we go on to cloture and that amendment could be called up as modified when it was not entered in a timely fashion at the desk.

Mr. DOLE. Right.

Second, that would not prejudice anyone as far as a second-degree amendment if we agree with these.

Mr. BYRD. There will be no second-degree amendments to those, I would hope, if we entered into an agreement.

Mr. LEVIN. Mr. President, reserving the right to object on that, I do have a second-degree amendment at the desk. I am trying to work on something with staff. In the event that Senator DOLE offers an amendment on conventional ring and we do not work it out, then I want the right to offer a second-degree amendment. I expect we can work something out. It is just to that one amendment.

Mr. DOLE. I would say to the distinguished committee chairman if we cannot work it out, I do not intend to offer it.

Mr. CRANSTON. Mr. President, reserving the right to object also, I do want the right to offer a second-degree amendment to the Helms amendment.

Mr. WALLOP. Mr. President, reserving the right to object, and I shall not, the only purpose of modification I seek is to try to make it more acceptable, not less.

Mr. SYMMS. Further reserving the right to object, that is exactly the case with my amendment, and I think the modifications have taken away some objection people have and makes it more clear what my intention was,

which is not a major change of what we are trying to do. It can be explained in 30 seconds of what the purpose of the amendments are.

Mr. BYRD. Mr. President, I ask unanimous consent that only those amendments that have been enumerated by Mr. DOLE may remain to be called up to the resolution of ratification.

Mr. CRANSTON. Mr. President, reserving the right to object, I do want my rights to offer a second-degree amendment to the Helms amendment.

Mr. BYRD. Mr. President, I would hope we could include Mr. CRANSTON with an amendment.

Mr. DOLE. I have been notified that Senator SPECTER now wants a second amendment, 1 hour equally divided.

Mr. BYRD. That is fine with me.

I ask unanimous consent that before we get any more telephone calls from staff people that the amendments that have been enumerated by Mr. DOLE be the only remaining amendments to be called up to this resolution of ratification which includes the amendment by Mr. CRANSTON and the amendment by Mr. SPECTER.

Mr. DOLE. The second amendment.

Mr. BYRD. Yes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BYRD. Mr. President, I thank all Senators.

Mr. President, I ask unanimous consent that the vote on cloture be postponed to the hour of 7:30 p.m. because we understand this cloture motion is still out there. We may have limited the number of amendments that may be called up, but we have not limited debate. So that cloture motion is out there hanging like a Damocles sword over all of us.

The PRESIDING OFFICER. Is there objection?

Mr. WILSON. Mr. President, reserving the right to object, all I wish to do is ask the majority leader a question.

Under the request he is propounding, do I understand that the only second-degree amendment that would be in order is that offered by the senior Senator from California to the Helms amendment?

Mr. BYRD. Yes. The only amendments that remain to be offered, whether first degree or second degree, would be those enumerated by Mr. DOLE. This order does not open up those amendments to amendments.

Mr. WILSON. I thank the majority leader.

I do not object.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HELMS. Would the Chair state the unanimous consent? There is so much noise in the Chamber.

The PRESIDING OFFICER. The Senator from North Carolina is correct. The Chamber will be in order.

The unanimous-consent agreement is there shall be no amendments in

order to the resolution of ratification other than the amendments enumerated by the distinguished Republican leader, Mr. DOLE, which included a Cranston amendment to an amendment by the distinguished Senator from North Carolina, Mr. HELMS.

Mr. HELMS. It is too late, I suppose—may I address the question, Mr. President, to the distinguished majority leader? There was so much noise in the Chamber I did not hear what the unanimous-consent request was with respect to the second-degree amendment by the distinguished Senator from California.

I would hope that I might be able, even at this late date, to reserve the right to object, because of the noise, and include a second-degree amendment of my own. Then it will be a question of getting recognition, I suppose.

I withdraw it. That is all right. We will work it out.

Mr. BYRD. Mr. President, I am sorry that the Senator was not able to hear. There was a good bit of noise at that time.

At this point, the order has been entered with only those amendments that were enumerated, and one by Mr. CRANSTON was added. I did not say it could be offered as a second-degree amendment, but I believe Mr. CRANSTON himself asked that it be, and nobody raised any objections to that.

Mr. HELMS. Well, that is the luck of the draw. We have had everything in this Chamber going on except dancing girls. Maybe we will have that before the evening is over.

Mr. CRANSTON. If the Senator would will, I hope that perhaps we can work out an understanding on it where there need be no amendment offered, if the Senator can accept what the administration has been suggesting to him and what I would like to suggest to him.

Mr. HELMS. When you translate around this place, in terms of this treaty, when you say "the administration," you mean the State department, and that frightens me badly. We will see. I will certainly be glad to work with the Senator.

Mr. BYRD. Mr. President, I thank the distinguished Senator from North Carolina.

Mr. President, is there an amendment pending? I hope a Senator will call up an amendment now.

The PRESIDING OFFICER. To respond to the question of the distinguished Senator from West Virginia, there is no amendment now pending.

AMENDMENT NO. 2317

(Purpose: To include in the instruments of ratification a unilateral declaration of the United States regarding Strategic Arms Reduction Talks.)

Mr. HELMS. Mr. President, I have an amendment at the desk and I call it up and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

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The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS), for himself, Mr. BYRD, Mr. DOLE and Mr. SIMPSON, proposes an amendment numbered 2317.

Mr. HELMS. Mr. President, we are in the same problem.

The PRESIDING OFFICER. The Senator from North Carolina is correct. The Senate will be in order. The Senate will be in order. The clerk will suspend until the Senate is in order.

The clerk may continue.

Mr. HELMS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the Resolution of Ratification, insert the following before the period: "provided, further, however, that the following declaration shall be included in any instruments of ratification exchanged between the parties:

"DECLARATION. The United States of America declares that, as an integral factor in its decision to adhere to this Treaty, it intends to continue to negotiate with the Union of Soviet Socialist Republics a treaty effecting reductions in strategic nuclear forces of the Parties and, in conjunction with its NATO allies, to negotiate a treaty effecting reductions in the conventional forces of NATO and the Warsaw Pact, and in so doing, that it shall be guided by the following principles and considerations:

(a) A main object of such future treaties shall be international stability and reduction of the risk of war by obtaining general equivalence in the resultant forces of the Parties;

(b) During any negotiations contemplated by this declaration, the United States shall act in close consultation with its allies who are member states of the North Atlantic Treaty Organization and with such other states as appropriate;

(c) Negotiations contemplated by this declaration shall also be conducted in close and detailed coordination with the United States Senate, and the Senate should be kept fully apprised of all significant proposals intended to be made, or made, to the Union of Soviet Socialist Republics and, with respect to such negotiations, the judgments and recommendations of the United States Senate shall be given plenary consideration and due regard;

(d) The negotiations contemplated by this declaration shall also seek to secure regimes of stringent verification and full and exact compliance which carry forward but strengthen significantly the verification and compliance regimes of the present Treaty;

(e) In accordance with the Constitutional process of the United States, the United States shall, notwithstanding any presumed or asserted contrary principle of international law, not be bound to adhere to or observe any treaty contemplated by this declaration until ratification thereof pursuant to the advice and consent of the Senate;

(f) Pursuant to this declaration, any joint declaration reached with the Union of Soviet Socialist Republics of a framework for the negotiation of the treaties contemplated hereby, and such framework itself, shall serve for the purpose only of guiding the conduct of the negotiations which the United States herein has declared its desire to pursue expeditiously, and shall not constrain any military programs of the United States unless otherwise provided for in ac-

cordance with Section 33 of the Arms Control and Disarmament Act;

(g) Notwithstanding the other provisions of this declaration, the United States considers full and exact compliance with the present treaty and with all other existing arms control agreements between the Parties to be a major issue affecting i) the proposals and attitudes of the United States with respect to the future treaties contemplated hereby and ii) proportionate and appropriate responses with respect to such existing agreements."

AMENDMENT NO. 2320 TO AMENDMENT NO. 2317

(Purpose: to include in the resolution of ratification a unilateral declaration of the Senate regarding Strategic Arms Reductions Talks)

Mr. CRANSTON. Mr. President, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from California [Mr. CRANSTON] proposes an amendment numbered 2320.

Mr. CRANSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment is as follows:

In the pending amendment, strike all after the word "however" in line 1 and insert the following: "That it is the sense of the Senate: that, as an integral factor in the U.S. decision to adhere to this Treaty, the U.S. intends to continue to negotiate actively with the Union of Soviet Socialist Republics a treaty effecting reductions in strategic nuclear forces of the Parties and, in conjunction with its NATO allies, to negotiate a treaty effecting reductions in the conventional forces of NATO and the Warsaw Pact, and in so doing, that it should be guided by the following principles and considerations:

"(a) A main object of such future treaties should be international stability and reduction of the risk of war;

"(b) During any negotiations contemplated by this declaration, the United States should act in close consultation with its allies who are member states of the North Atlantic Treaty Organization and with such other states as appropriate;

"(c) Negotiations contemplated by this declaration should continue to be conducted in close and detailed consultation with the United States Senate, which should be kept fully apprised, as provided in Section 37 of the Arms Control and Disarmament Act, as amended, of all significant proposals made to the Union of Soviet Socialist Republics, and with respect to such negotiations, the judgments and recommendations of the United States Senate shall be given highest consideration and due regard;

"(d) The negotiations contemplated by this declaration should also seek to secure an effective verification regime which builds significantly upon the verification regime of the present Treaty;

"(e) In accordance with the Constitutional process of the United States, the United States will not be bound to adhere to any treaty contemplated by this declaration until ratification thereof pursuant to the advice and consent of the Senate, but will have an obligation to refrain from acts that

would defeat the object and purpose of such treaty;

"(f) Pursuant to this declaration, any joint declaration reached with the Union of Soviet Socialist Republics on a framework for the negotiation of the treaties contemplated hereby should guide the conduct of the negotiations which the United States herein has declared its desire to pursue expeditiously;

"(g) Notwithstanding the other provisions of this declaration, the United States considers full compliance with the present treaty and with all other existing arms control agreements between the Parties to be a major issue affecting the proposals and attitudes of the United States with respect to the future treaties contemplated hereby."

Mr. CRANSTON. Mr. President, in the opinion of this Senator—and I believe other Senators on both sides of the aisle—the Helms amendment, in its original form, places unnecessary and complicating restraints on our negotiators that will add to the negotiating burdens of the Reagan administration and to the next administration, whatever party may win the election this fall.

The provision offered by the Senator from North Carolina establishes goals which could help to set up START or a conventional arms treaty for defeat in the Senate if either treaty does not succeed in meeting these goals, even if the treaty is in U.S. security interests.

Specifically, I have the following problems with the amendment as offered by the Senator from North Carolina.

The PRESIDING OFFICER (Mr. CONRAD). The Senator will suspend for a moment. Maybe we can return order to the Chamber so that we can hear the Senator. We are not going to proceed until there is order in the Senate and Senators can be heard.

Believe me, we are not going to proceed until there is order so Senators can be heard.

The Senator from California.

Mr. CRANSTON. Mr. President, let me state again that I have been talking with Ambassador Glitman throughout the day. It is plain that the administration shares many, if not all, of the concerns that I will now very briefly express and perhaps they have some other concerns—I believe they do—that I will not express. My principal concerns can be very succinctly summed up as follows:

The Helms amendment, I believe, is unwise because it would require the United States to reject, as a matter of policy, international law that requires that parties to a treaty will take no action contrary to its object and purpose pending ratification.

Second, it would compromise efforts of President Reagan and/or the next President—whether Democratic or Republican—to establish interim restraint pending final ratification of START.

Third, it would require prenotification of the Senate for "all significant proposals" before proposing them to

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the Soviets and would require convening of a Geneva plenary renegotiating session whenever the Senate has proposals that it wished to be considered.

Senator BYRD spoke eloquently in the closing of the debate we just had over the interpretation matter about the powers of the Senate. He was, of course, speaking in terms of the separation of powers. I believe that this provision would violate the separation of powers and would intrude into the realm of the executive. And, much as we want to protect our role—the Senate's role, the legislative role, the congressional role—we also, I believe, have a responsibility not to unnecessarily seek to intrude into the role and realm reserved to the executive branch.

Fourth, the Helms amendment would set as a standard for future treaties on strategic and conventional forces a measure of "general equivalence"—which, in the case of conventional talks and hopes for negotiations, is a requirement totally rejected by our NATO allies. They do not believe that general equivalence makes sense in terms of what we hope can be accomplished in conventional negotiations.

Fifth, the requirement for "exact compliance" is unrealistic and could cause trouble if it was taken literally.

Sixth, it makes a sense-of-the-Senate resolution a binding declaration that "the U.S. declares"—this is the Senate declaring, not the United States—and it requires delivery of policy declarations to the Soviets in Moscow.

Overall, I believe the impact would be—and I think the administration shares this view—the impact would be a chilling effect on efforts to negotiate the START Treaty that President Reagan hopes to move forward, to some degree, before he leaves the White House.

There are those who say that this is unnecessary. It certainly is that.

There are those also who say that no administration will pay any attention to this and no Senate will insist that it be implemented. However, we should take more seriously what we do or not do in this body.

Let me cite the authoritative Restatement of the Formulations Law of the United States, volume I, chapter 2, about the significance of what we do in matters like this. That authoritative volume makes clear that a declaration and a resolution of ratification is no mere statement of the Senate's preferences. It is binding on the President and all future Presidents as a matter of domestic law.

We should consider that before we take actions of this sort.

Did the Senator from Tennessee seek the floor?

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. GORE. I seek recognition.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. GORE. Mr. President, I would like to speak in favor of the Cranston second-degree amendment, and I would like to say to my colleagues here that I feel this is an extremely important matter. Many Americans are hopeful not only that the INF Treaty will be ratified but that the summit meeting about to take place will see further progress toward a resolution of the far more important controversies in the area of strategic arms control.

It is toward the prospect of such progress that the amendment offered by the Senator from North Carolina appears to be aimed. That amendment, the first degree amendment, is a very skillfully drafted amendment in the sense that it leaves me wondering whether what is being offered here is an innocuous restatement of existing, and well understood constraints on the authority of Presidents, or whether it is an effort to radically limit the authority of this and future Presidents.

The second-degree amendment clarifies the matter in a wise fashion. We cannot take the risk that this language will ever be interpreted in the latter fashion. It must either be clarified in ways that make this impossible, or rejected.

I draw my colleagues' attention to two portions of the proposed amendment: sections (e) and (f).

Section (e) says:

In accordance with the Constitutional process of the United States, the United States shall, notwithstanding any presumed or asserted contrary principle of international law, not be bound to adhere to or observe any treaty contemplated by this declaration until ratification thereof pursuant to the advice and consent of the Senate.

The phrase "notwithstanding any presumed or asserted contrary principle of international law" is a direct attack on a very specific concept which has been an important element in earlier debates about arms control.

Customary international law, as codified by the Vienna Convention of 1969, creates an obligation for states that have signed treaties, to take no action that would be inconsistent with such treaties, pending their entry into force. This means that between signature and ratification of treaties, the United States does incur obligations. So, too, with the Soviets.

If no obligations had existed, Mr. President, there would have been no point whatsoever to all the complaining we have heard over the years from the administration, regarding Soviet noncompliance with elements of the signed, but unratified, SALT II Treaty.

The same would be true of complaints from the administration regarding alleged Soviet violations of the signed, but unratified TTBT and PNE Treaties.

As written, the Helms amendment would have the following effect. It would vitiate the force of customary international law as applied to a possi-

ble START and/or conventional arms control agreement, should either be accomplished by this or any future president.

Although such treaties might be signed, we know only too well that there can be a prolonged period extending over years before it is clear whether such treaties will be ratified. The issue is whether during this time, the United States considers itself and the Soviet Union obliged to respect the terms of the treaty, or completely free to act. If the latter, then of course it will be "Katy, bar the door."

I, therefore, suggest Mr. President, that section (e) be rephrased and dealt with in language similar to that suggested by the Senator from California.

In accordance with the Constitutional process of the United States, the United States shall, other than as required under customary international law, not be bound to adhere to or observe any treaty contemplated by this declaration until ratification thereof pursuant to the advice and consent of the Senate.

Let me now move on to section (f).

Section (f) anticipates that this or some future president might one day reach a joint declaration of principles or a framework agreement on START or on conventional forces, with the Soviets—as a step along the route toward a completely worked out text. There are some well known precedents: the Nixon-Brezhnev joint statement of principles to guide negotiators and the Ford-Brezhnev accord at Vladivostok.

In this event, the section provides that any such agreement:

"shall not constrain any military programs of the United States unless otherwise provided for in accordance with Section 33 of the Arms Control and Disarmament Act.

Section 33 of the Arms Control and Disarmament Act reads as follows:

no action shall be taken under this or any other law that will obligate the United States to disarm or to reduce or to limit the Armed Forces or armaments of the United States, except pursuant to the treaty-making power of the President under the Constitution, or unless authorized by further affirmative legislation by the Congress of the United States.

I have no objection, Mr. President, to reiterating the provisions of existing law. But I submit that the proposed amendment is substantially broader in the scope of its language than is the law to which it refers. There is a nontrivial difference between the amendment's stricture that the President may "not constrain any military programs of the United States," and the law's formulation which is limited to actions that would "disarm or reduce or limit the Armed Forces or armaments of the United States."

Moreover, Mr. President, I do not think we are dealing with theoretical distinctions. Let me illustrate. Suppose, for example, this or a future President agrees with the Soviets that a START treaty yet to be completed will ban the further testing of nuclear

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weapons. Suppose further, that the President then wishes to declare a moratorium on such testing, in concert with a similar declaration from the Soviet Union.

Under the amendment, he could not do so—because this would be a constraint on a military program of the United States. Under existing law, he could do so, since what is involved is arguably not disarmament, or a reduction, or a limit to the Armed Forces or armaments of the United States.

So, Mr. President, I might not agree with such voluntary actions by a President, but I believe he has the authority to take them.

Therefore, I believe that section (e) of the amendment should be as proposed in the second degree amendment offered by the Senator from California, revised as follows, after the word "shall":

... shall not obligate the United States to disarm or to reduce or to limit the Armed Forces or armaments of the United States, unless otherwise provided for in accordance with Section 33 of the Arms Control and Disarmament Act.

Mr. President, I recognize that the proposed Helms amendment is in the form of a unilateral declaration of the United States to be included in the instruments of ratification of the INF Treaty. And in that sense, the amendment has no force to bind the future behavior of the United States or of the Soviets.

But, inasmuch as this language would have the United States declare unacceptable principles, even theoretically, I think the Senate should not adopt the amendment and should, instead, vote in favor of the second-degree amendment offered by the Senator from California.

I urge my colleagues to do precisely that.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I recognize that the amendment of the Senator from North Carolina is not earthshaking in its consequences due to the fact it is a declaration, unilateral declaration by the United States, and thus we can observe it or not observe it.

Nonetheless, it seems to me that it sets forth some principles therein that it would be wiser for us not to adopt. I refer particularly starting with (a).

In (a) it talks about, "We shall seek international stability and reduction of the risk of war by obtaining general equivalents in the resultant forces of the parties."

Just the use of the words "general equivalents," Mr. President, seems to me vague and confusing. It is not clear exactly what we are saying.

But, Mr. President, I find (c) a more disturbing provision. In it it says that "The Senate should be kept fully apprised"—well, nobody will object to that—"of all significant proposals." And then it talks about the proposals that are to be made.

"The Senate shall be kept fully apprised of all significant proposals intended to be made or made to the U.S.S.R." Yes, it is clear. It would be nice if it were possible to keep the Senate fully apprised. But the mandatory word "should," it seems to me goes too far.

Furthermore, it says with respect to such negotiations the judgments and the recommendations of the U.S. Senate shall be given plenary consideration. Clearly, any President does want to negotiate with the support of the Senate and will do everything he can to keep the Senate posted and informed, but it is not possible all the time, nor do I believe he should be constrained, any President should be constrained, in the midst of negotiations with being required first to notify the U.S. Senate.

I do not find that a meritorious provision, and that, of course, is one of the provisions that is removed under the amendment by the Senator from California.

Proceeding with (e). What (e) does, it eliminates the possibility for what we might call interim restraint. I do not think that is wise. It seems to me between (e) and (f), and particularly (e), that the President might well reach some constraining agreements with the Soviet Union that, for example, they would not test further weapons or they would agree to the limitations as they currently existed while they are working on a further agreement, such as the START agreement.

I do not think that (e) is a wise provision to have in there because it says that those shall not be observed, regardless of whether the President has entered into them or not.

Overall, it seems to me, Mr. President, that the language of the Senator from North Carolina, even though it is not totally binding on the Senate or our U.S. Government, is not the best to have in there. Therefore, I do support the further qualifying amendment by the Senator from California.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I also agree with the qualifying amendment of the distinguished senior Senator from California. The question is whether we are in the ninth hour where we are going to change, basically, all international law and how treaties are set up, how they are to be negotiated and what is to be the conduct of parties, especially major parties that the rest of the world looks to, like the United States and the Soviet Union, what is going to be their practice, policies during the time they are negotiating treaties? It would appear that the administration will not negotiate another arms control agreement before it leaves office.

It has negotiated this one, albeit as a minor arms control agreement. It is a positive step forward and one the majority of Senators will applaud. But

should we now in the ninth hour, the ninth hour of the debate suddenly tell the next administration what will be their conduct and how they must negotiate an arms control agreement? None of us even know whether that is going to be a Democratic or a Republican administration, but even if we did, is it appropriate for us to tell them the rules are about to change, that the Senate, in fact, will negotiate the treaty, not the administration? I think not.

So what we must do is look at this and suddenly realize in the basic amendment, the underlying of the distinguished Senator from North Carolina, we are saying that the power to negotiate and to act under those negotiations by the President, the Commander in Chief, shall be severely constrained.

I have heard for the 14 years I have been here by the proponents of the underlying amendment that we should stop trying to tie the hands of the President. This would tie the President for more than he ever has been, certainly any time in my lifetime.

Under this, the President could have his budget plans to spend \$2 to \$3 billion on a particular weapon system. They go into negotiations, they agree: "Let us not deploy this weapon system." We agreed not to use it. The Soviets agreed not to go forward with one of theirs, but it might be 6 or 7 months before all the ratification procedures start, before the Senate consents.

Are we saying, "Well, Mr. President, go ahead and spend the \$2 to \$3 billion anyway and the day you ratify that treaty, assuming the Senate has consented to it, we will give you another \$50 million to \$100 million to go out and dismantle everything you have built"? Well, that is the height of absurdity.

It will do something for the easing of tensions, but it certainly will do nothing to ease the budget deficit. That is one example.

I know the distinguished Senator from Arkansas wishes to speak. Let me close with one thing. I might mention this as sort of an adjunct of this whole debate on the INF Treaty. I hope that the members of the press are listening. I hope that those who write about this are listening. Just once, Mr. President, and I have constrained myself for weeks from saying this on the floor, just once so everybody will understand: the U.S. Senate does not ratify the treaty. The U.S. Senate will advise and consent to it. The President of the United States ratifies the treaty.

I mention this only because 20 or 30 times a day, I hear on the radio and on television, or in newspapers I read about whether or not the U.S. Senate will or will not ratify this treaty. We advise and consent to it. I suspect the President in short due course will ratify the treaty. I just want it said that we do not ratify it, the President

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ratifies it. He does it only if we advise and consent to it.

Sorry, I could not constrain myself any further on that, Mr. President. I held back for 2 or 3 weeks. I just had to say it. I yield the floor.

Mr. CRANSTON. Will the Senator yield? I just want to thank the Senator from Vermont for the particular leadership he has given on this issue of restraint when treaties are in the works or pending. He and Senator BUMPERS, Senator CHAFEE, and Senator HEINZ have together worked very hard to try to quell this arms race and to prevent the United States from doing things that undermine potential treaties that would reduce the scale, the cost, and the danger of the arms race. PATRICK LEAHY has been a great leader on this front for a long, long time.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia sought recognition first. The Senator from Virginia.

Mr. TRIBLE. Mr. President, I would like to step back from the two pending amendments and underscore my support for the INF Treaty now before us.

This treaty may prove to be the most lasting legacy and crowning achievement of the Reagan Presidency.

The hearings held by 3 Senate committees over the last 4 months have underscored the benefits of this treaty.

For the first time in history, we have done more than simply reshuffle the nuclear chess board. INF eliminates an entire class of nuclear weapons. The treaty wipes out the most lethal threat that NATO has ever faced—the Soviet SS-20—and it requires the Soviets to destroy roughly four missiles for every one we give up.

In addition, it will likely enhance the prospects for an agreement on long-range nuclear weapons. Because of INF, we are closer to a START accord.

This treaty also contains the most comprehensive verification requirements ever contained in an arms control agreement. The Soviets will be barred from testing missiles. The United States will have unprecedented rights of onsite inspection. American observers will be able to see first-hand whether the Soviets are keeping their promises.

Politically, INF is a stunning success for the Western alliance. NATO succeeded because it had the will to resist repeated Soviet attempts to split the alliance, and because we won major concessions from the U.S.S.R. As Secretary of State Shultz testified, "historians may come to see the INF experience as NATO's finest hour."

These are important advantages, and they argue strongly for ratification. But the treaty's significance goes much beyond this. The INF process reveals much about arms control, national security and the requirements of negotiations with the U.S.S.R.

For the United States alone, the lessons are many.

First, decisions taken now on arms and weapons systems will affect this nation for years, indeed for decades, to come. The Dual-Track decision that began the INF process was made by NATO in 1979, nearly a full decade ago. Only now do we realize its benefits.

We must be mindful of that as we decide each year which weapons to build and which to abandon. Short-sighted decisions, taken now will leave us vulnerable many years down the road. They may well force the United States to negotiate from a position of weakness rather than strength.

In addition, INF has put to rest the simplistic notion that building more weapons is always and inevitably a destabilizing act. How often were we told that we already had sufficient weapons to destroy the Soviet Union, that we needed no more?

This treaty was won because NATO built and deployed. Had it not, the Soviet monopoly on INF missiles would remain, and Western Europe and the American forces stationed there would be more vulnerable than ever.

INF has proved that weapons are not destabilizing merely because they enlarge our nuclear arsenal. The worth of any weapons system must be judged by its contribution to our national security. INF demonstrates the application of that principle to nuclear arms.

Finally, the INF treaty is symbolic of the profound change that President Reagan has wrought in Foreign Affairs—America is ready to lead once again. For years before the Reagan presidency, America's ability to lead the West was in doubt; its will to do so was questioned. No longer. The United States is the free world's unquestioned leader. We no longer shun the mantle of leadership; we seek it.

Our resolve led to the success of INF. Year after year, the United States urged, prodded, and cajoled our allies to stick with the deployment of INF weapons. Our negotiators consulted often with NATO leaders about how the Soviet-American talks were progressing, where they were headed, and why it was important to stay the course. Our West European allies agreed. They went ahead with the INF deployment, and they fully support this treaty.

That is the kind of leadership that NATO needs and that only the United States can provide.

But, Mr. President, as America has been transformed, so too has the Soviet Union. There, too, new leadership has wrought new ideas. The manner of governing the Soviet Union has changed immensely, and with good reason.

Mikhail Gorbachev faces immense difficulties. The Soviet economy does not work. The costs of empire are staggering. Indeed, the Soviet Union today has become a muscle-bound Third World country. Gorbachev recognizes this, because he must. He has sought

reforms—not because he dislikes Soviet Communism but because reforming it may be the only way to save it.

We should welcome these reforms but we should not underestimate the impact of those reforms on the future of the Soviet-American relationship. They may well make the Soviet Union more productive, more powerful, and the more powerful and emboldened our foe, the more difficult our task.

And Mr. Gorbachev's ability to attain an INF Treaty is, ironically, cause for vigilance as well. When in history has a Soviet leader successfully told his military leaders that he was going to eliminate an entire class of nuclear weapons? Gorbachev's ability to do so speaks volumes about his hold on power.

These changes in the United States and the Soviet Union have enormous implications, particularly for future arms control efforts.

The Soviets will be tenacious in future arms talks. Their leader has tightened his grip on the reins of power. He will be a difficult foe, especially if his domestic reforms begin to produce a stronger Soviet economy. The United States must be prepared.

Mr. President, another central lesson of INF is that arms control by legislative decree is unilateral arms control. Politics ought not to be the basis of defense spending and arms control decisions.

We must also be poised to take advantage of a final lesson of INF. President Reagan has upset two decades of arms control assumptions. For years, it has been said that the very best we could accomplish was to set limits on numbers of nuclear arms, limits that we would reach at some distant point in the future. Not so.

When we negotiate from strength and when we are prepared to deal with a tenacious adversary, when we are patient, we can achieve arms reductions. We have done so with this INF accord, but only because we resisted repeated Soviet attempts to wring concession after concession from us.

Time and time again, the Soviet Union laid down a marker, and proclaimed that if we failed to give in, the arms talks would end and we should be to blame. They demanded linkage to a host of other issues, including the strategic defense initiative. Time and time again, the United States and our allies refused. And because we pursued a single goal, we prevailed.

Mr. President, those are the paths that have brought us to this INF accord. In voting to ratify this treaty, we will support much more than its text. We will vote for much more than the elimination of intermediate nuclear forces. For we will support a way of governing that relies on a strong national defense, a willingness to lead, and an ability to stand up to an increasingly capable adversary.

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When we are strong, we will be better able to defend freedom in the world and keep the peace. We will be better able to secure those lines that divide free men from those not yet free.

The same decisions that enhance our strength will enhance our ability to lead. As America asserts her individual will, we engender a collective will and support from our allies and friends.

It has taken nearly the entire Reagan Presidency to achieve this arms accord. But it stands as a paradigm on why a strong national defense is so vital; on how to employ a strong defense policy in the cause of nuclear arms reduction; on how to unify an alliance around that single goal; and now how to unify an alliance around a single goal and how to lead an alliance against a foe that grows more and more formidable.

That is why this treaty may become the crown jewel of the Reagan years. That is why I support it and encourage my colleagues to do so.

Mr. PELL. Returning to the matter at hand, and the amendment before us, I have a couple of concerns here, and if I could ask the Senator from North Carolina, when he talks about plenary consideration—

Mr. HELMS. Mr. President, I can anticipate the question. I will say to the distinguished Senator that that word was changed to the words "full and highest level" at the suggestion of the distinguished chairman of the Armed Services Committee, Mr. NUNN.

Mr. PELL. In other words, the document we have a copy of is not what it says here.

Mr. HELMS. I will ask the clerk. On page 2—

Mr. PELL. The one at the desk says "plenary." I would concur with the Senator from North Carolina if it has been changed. I know he and I mean the same thing.

Mr. HELMS. Incidentally, if I may, Senator—if he will yield to me, I thank him for doing so—this amendment was part of the agreement reached yesterday with the leadership at the time that I agreed to expedite further consideration and action on the resolution of ratification. We consulted everybody in sight—the chairmen and ranking members of the Intelligence Committee, of the Armed Services Committee, and of the Foreign Relations Committee, and the staffs thereof. We have worked on this thing for more than 24 hours.

I thought we had a good-faith agreement about it. But I have heard nothing until the time of the Cranston amendment in the second degree was sent to the desk. I had not seen it. We would have entertained any suggestion about it and did make a number of changes.

I might add that the distinguished majority leader is a cosponsor, as is the distinguished minority leader and the distinguished assistant minority leader. Senators BYRD, DOLE, and

SIMPSON, respectively, are cosponsors. You had better believe Senator BYRD went forward with a fine-tooth comb and he indicated to me that he liked it, and obviously did because he authorized me to include him as a principal cosponsor.

So I am at a loss to understand what is going on here. But I will say that the distinguished Senator from California is well within his rights under the rule. But I still do not understand what is going on in the context of an agreement having been reached yesterday.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. HELMS. Yes.

Mr. BYRD. Mr. President, as one who has probably participated in more unanimous consent agreements than has any other human being who ever served in this Senate, and as one who will still be active for awhile at least in trying to get unanimous consent agreements, let me say for the RECORD that Senator HELMS, I am sure, was under a clear impression that he would get a vote on a freestanding amendment without an amendment to it. That was my clear impression as to what we were doing at the time. Nobody raised any question about a second-degree amendment. I did not give it any thought. I thought we were all talking about how we would get the Senator from North Carolina and others to release the treaty so we could get on to the resolution of ratification. And with Mr. HELMS, we agreed that he would have one additional amendment to the treaty; we could then go to the resolution of ratification, and we could waive the "subsequent day" provision in paragraph (c) of section 1 of rule XXX of the Standing Rules of the Senate.

He entered into that agreement in good faith. We were all acting in good faith. The distinguished Senator from California, Mr. CRANSTON, was not present. He is not bound in any way by what we did, and he is acting within his rights under the rules.

But I must say that I am chagrined that there is a second-degree amendment offered to the Senator's amendment. It is done properly within the rules. Nobody is sneaking up on anybody. I was a party to these understandings, and I was recreant in not raising the question then as to whether or not there might be a second-degree amendment. But I did not. I did not think about it.

Mr. HELMS. I did not, either.

Mr. BYRD. Many of us who are accustomed to working here with the rules every day cannot possibly think of everything, every contingency that might arise, under the pressures and under the circumstances that envelop us as we are trying to work out a very critical and complex arrangement.

The Senator from North Carolina expedited the work of this Senate when he said he would offer one more amendment on the treaty, and we

could then move to the Resolution of Ratification. He and other Senators could have kept us on that treaty until the cloture motion operated, and that could have been for an additional 30 hours.

So I really feel badly about this. I must say to the Senator, and I do not cast any reflection on Mr. CRANSTON in saying this. I will tell the Senator that I have to sit down with other Senators here and work out these time agreements, and the Senator from North Carolina gave up a great deal. He gave up a great deal.

I wish I were the one, let me say this, who wanted to offer the second-degree amendment. I would not do it. I would offer a separate amendment. But I was there and had the understanding that the Senator from North Carolina would limit his remaining amendments, among which this one would be included.

Mr. CRANSTON was not there, and had no reason to know anything about the understanding. But it is extremely difficult, and it makes it difficult in the future, to get agreements when we may want them just as badly as we wanted this one, if something intervenes which is unavoidably unfair. In that sense, I apologize to the distinguished Senator.

I am going to vote with him, and frankly, I hope his amendment is adopted because I feel somewhat embarrassed by this situation. It is nobody's fault. I could have saved myself that embarrassment by thinking of the possibility of a second-degree amendment. I did not think of it. The other Senators in the room obviously did not think of it. I feel I ought to say this for the record because I operated with complete honesty, absolute good faith, and I am sorry that this is turning out this way.

I am going to vote with the Senator. If there is a motion to table the Cranston amendment, I am going to vote for that motion to table, not because the amendment of the Senator from California is not a worthwhile amendment, not because of that at all, but because I think that good faith in this Senate—and the Senator from North Carolina acted in good faith—is worth more than any single amendment can ever be worth. I know the Senator understands that nobody has operated in bad faith. This is just a development that neither he nor I foresaw. But I know one thing: He did let us off the hook and so expedited the work on this treaty for no telling how many hours when he could have done otherwise.

I feel a little better, having said that, and I hope no Senator will take umbrage at anything I have said, because my remarks are not pointed toward any Senator. I have to face the Senator and other Senators in the future, for the rest of the years here, in working out time agreements and other matters.

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Mr. HELMS. Mr. President, will the Senator yield?

Mr. BYRD. The Senator has the floor.

Mr. HELMS. I thank him very much.

Let me say, for the RECORD, and I have said it many times, that nobody with whom I have ever worked, either in the Senate or previously, has operated with more good faith than the distinguished Senator from West Virginia. I appreciate him for that and for many other reasons. I appreciate his statement on this question.

Mr. PELL. Mr. President, I think we have ground for compromise here on one thing. I do not think that the Senator from North Carolina has realized that it says "plenary consideration," at the desk. I am sure he does not mean that any recommendation of the Senate should be had in plenary session in Geneva with the Soviets, which is what it says now.

Mr. HELMS. If the Senator will read the dictionary, and I am sure he has—

Mr. PELL. I have.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Jersey.

Mr. BRADLEY. Mr. President, the underlying amendment offered by the distinguished Senator from North Carolina raises a number of questions in my mind, but one of them relates to section (c), in which the amendment states:

Negotiations contemplated by this declaration shall also be conducted in close and detailed coordination with the United States Senate, and the Senate should be kept fully apprised of all significant proposals intended to be made, or made, to the Union of Soviet Socialist Republics and, with respect to such negotiations * * *

As I read this section of the amendment, the President of the United States, President Ronald Reagan, during the summit meeting in the coming week, would be unable to even discuss START negotiations. On the face of it, this is absurd.

Why should the Senate handicap the President of the United States from discussing START negotiations in Moscow in the coming week? I do not know if it is the intention of the Senator from North Carolina to handicap the President of his own party in negotiations with the Soviet Union, but clearly this is what this amendment says.

I would hope that we could proceed by adopting the Cranston amendment, and if that fails, reject the amendment of the Senator from North Carolina.

There are a number of other reasons why it should be rejected, but the one at this moment that is to my mind most important is that it would shackle President Reagan in his discussions with Mikhail Gorbachev.

I hope the Senator from North Carolina does not want to do that.

Mr. President, I would hope that we would reject the amendment of the Senator from North Carolina.

Frankly, the INF Treaty, the discussion about the INF Treaty, I think, should not be a vehicle for a lot of non-INF Treaty issues.

Those are two reasons why, in my view, the Cranston amendment should be selected and adopted, and the amendment of the Senator from North Carolina should be rejected.

The amendment of the Senator from North Carolina is precisely the wrong signal for the U.S. Senate to send; as the President of the United States is heading toward Moscow. The summit is clearly going to be in an atmosphere in which some START negotiations are taken. If the Senate adopts this amendment, we are telling the President: "No, Mr. President, you can't even discuss any aspect of the START negotiation unless the U.S. Senate has been fully informed." The language says that the proposals intended to be made should be shared with the U.S. Senate. I think it is enormously shortsighted.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BYRD. Mr. President, will the Senator yield to me?

Mr. HELMS. I yield.

Mr. BYRD. Mr. President, I ask unanimous consent that the vote on the motion to invoke cloture occur 3 minutes from now; if this request be objected to, that it be suspended until the hour of 8:30 p.m. today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I think I have an answer to the confusion about the amendment.

There were two amendments. One was submitted after my discussion this morning with Senator NUNN.

I ask unanimous consent that on page 2 of the amendment, line 19, the word "plenary" be stricken and the words "full and highest level" be inserted, making it read, "shall be given full and highest level consideration and due regard."

Mr. BRADLEY. Mr. President, reserving the right to object, will the Senator repeat where the change is?

Mr. HELMS. I say to the Senator that this is precisely the language suggested by Senator NUNN, after consultation with several Members on the side of the Senator from New Jersey.

On page 2, line 19, the word "plenary" is stricken and the words "full and highest level" inserted.

Mr. BRADLEY. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. CRANSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, in deference to the majority leader's views, in deference to the views of others who feel there were some good-faith negotiations with the Senator from North Carolina, I am going to make a suggestion.

Nobody has charged anybody with bad faith here. I was not involved in the negotiations. The staff of the Foreign Relations Committee, incidentally, was not involved in the negotiations. The Senator may have mistaken other staff for Foreign Relations Committee Staff, but they were not involved.

The Senator apparently felt that he would have a chance to have a vote on something that he would offer relating to START, and others feel that they made that commitment to him.

I will be willing to withdraw my second-degree amendment so that we can continue to debate this and then have a tabling motion on the proposal of the Senator from North Carolina so then we will get a sense of where we are on this. So I will do that after I make one more point as to where I feel that the amendment offered by the Senator from North Carolina is very unwise. It would shackle President Reagan right now on the eve of his going to Moscow. He would be unable to discuss START in any way in Moscow because section (c) of the proposal of the Senator from North Carolina reads:

Negotiations contemplated by this declaration shall also be conducted in close and detailed coordination with the United States Senate, and the Senate should be kept fully apprised of all significant proposals intended to be made, or made, to the Union of Soviet Socialist Republics and, with respect to such negotiations, the judgments and recommendations of the United States Senate shall be given plenary consideration and due regard.

The Senate has not been apprised in any formal manner and I do not think very much in any informal manner of what the President and his people might discuss in regard to START with the representatives of the Soviet Union in Moscow. So we would be saying no discussion of START. A prime purpose of the President's mission, as I understand it, has been to try to move us along toward deeper reductions than are sought about by INF.

I think it would betray the hopes of the people of this country and the hopes of the people of the world to end this nuclear arms contest before it ends us, if we say to the President, "You cannot discuss this in Moscow."

I trust that Republicans will share the viewpoint of this Democrat on that subject and not shackle the President.

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That is part of what is at stake. It is not all of what is at stake. The administration has its own very grave concerns about all this and it does not support the proposal of the Senator from North Carolina. It does support efforts to modify it along the lines of what I have proposed.

But having said all that in the interest of comity and in the interest of finding out where we stand on all this and interest of dealing with the problems of those who feel that some sort of an agreement to which I and others were not a party would be violated if I persisted in offering my second-degree amendment, I withdraw my second-degree amendment.

The PRESIDING OFFICER. Is the Senator from California proposing a unanimous consent request to withdraw it?

Mr. CRANSTON. I do not think I need it. We have not had the yeas and nays on it.

The PRESIDING OFFICER. It does take unanimous consent.

Mr. CRANSTON. I ask unanimous consent.

Mr. LEAHY. Mr. President, reserving the right to object, and I shall not object because it is the prerogative of the Senator from California to make his request if he wants.

Certainly, when you have negotiations around here, one of the most important things is that negotiations always are in good faith. I realize there is no way for everybody to keep track of everybody's interest, but this amendment of the distinguished Senator from North Carolina has parts of it that are just very, very directly related to a resolution amendment that has been in here a number of times, the Bumpers-Leahy-Chafee-Heinz. I am not aware that Mr. BUMPERS, Mr. HEINZ, Mr. CHAFEE, or I were in any way involved in the negotiations. I think had we been it would have raised the same concerns that Senator CRANSTON has raised here, and I mention this only because the matter of arms control is of paramount interest, I think, to all Senators, not just some. Many have expressed a great deal of interest in certain aspects of arms control. Involving them in such negotiations would probably avoid the confusion here.

I suggest everybody acted in good faith, but I also suggest that perhaps it should have involved more or different people.

I will not object.

The PRESIDING OFFICER. Is there objection?

The Senator from New York?

Is there objection?

Mr. CHAFEE. Mr. President, reserving the right to object, I want to commend the senior Senator from California for what he is doing. I think it helps us move along here and I commend him for that.

There has been some confusion. I think it is an excellent step he has

taken. I want to express my appreciation to him.

Mr. CRANSTON. I thank the Senator very much.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, the amendment before us now is the Helms amendment. It is very clear. It would shackle—

The PRESIDING OFFICER. If the Senator will suspend, is there objection to the unanimous consent request to withdraw the amendment?

Mr. BYRD. Mr. President, reserving the right to object, I commend the distinguished majority whip for the fairness which he has demonstrated.

Let me say again that nobody, nobody at any time in connection with this agreement, said anything or acted in anything but good faith, and nobody since then has done such. The Senator from California has not acted in bad faith. The Senator from Vermont has not acted in bad faith. I have explained that already. It was just an unfortunate circumstance that developed that could make it a little difficult for us in the future.

I am glad that Senator CRANSTON has shown the fairness and rectitude that he demonstrated here today, and that is characteristic of him.

I thank him.

Mr. CRANSTON. I thank the majority leader.

Mr. EVANS. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Washington.

Mr. EVANS. Mr. President, I think it should be said that this Senator, a member of the Foreign Relations Committee, had no knowledge whatsoever of this arrangement put together. I know that there is great concern on the part of the Senate, certainly on this Senator, that we finish this treaty and present it to the President in time for the summit, but that is not as important as doing it right.

We have been treated to about 7 or 8 days of I guess what some could call debate but for the first three-quarters of that there was no debate. There was no amendment being offered. There was no identification of what was coming. It was just pure delay, just pure delay.

We finally got the majority leader to the point where he suggested and filed a motion for cloture and then apparently this arrangement was made. Once the motion for cloture was filed, all we had to do was wait until it matured.

This amendment in either the first or second degree would not have been in order, and this Senator certainly would have objected to it.

I hope that we are where we are. I shall not object to the unanimous consent of the Senator from California, but we have gotten ourselves into a position we need not have gotten ourselves into.

I think there are a multitude of things in this amendment which are dangerous, and I hope that we will promptly debate it and then vote it down.

The PRESIDING OFFICER. Is there objection to the request?

Without objection, it is so ordered.

The amendment was withdrawn.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, the amendment before us now is the Helms amendment. We have discussed this amendment in great length. The amendment would clearly shackle the President of the United States in his meetings in the Soviet Union with Mikhail Gorbachev. It would require any President to submit to Congress the positions he intends to propose to the Soviet Union prior to proposing it. That means President Reagan could not even discuss the START negotiations.

We have had over 1½ hours debate on this. I think, frankly, Mr. President, it has gone far enough. I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. COHEN. Mr. President, would the Senator withhold?

Mr. CHAFEE. I wonder if he would withhold.

The PRESIDING OFFICER. There is not a sufficient second.

Is the Senator insisting on the motion?

Mr. BRADLEY. I am insisting on the motion.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from New Jersey to lay on the table the amendment of the Senator from North Carolina.

The clerk will call the roll.

Mr. HELMS. Mr. President, there has not been a response. May I ask unanimous consent for 1 minute? I have not been allowed even to discuss my own amendment.

The PRESIDING OFFICER. Is there objection?

Mr. BRADLEY. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BRADLEY. Mr. President, reserving the right to object, the request is what?

The PRESIDING OFFICER. The request, as the Chair heard it, was 1 minute for the Senator from North Carolina.

Mr. BRADLEY. I do not object.

Mr. HELMS. I did not understand the Senator. That is quite all right.

Mr. BRADLEY. I do not object.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The bill clerk called the roll.

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Mr. CRANSTON. I announce that the Senator from Mississippi [Mr. STENNIS] is necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 38, nays 60, as follows:

[Rollcall Vote No. 159 Ex.]

YEAS—38

Adams	Graham	Mitchell
Bingaman	Harkin	Moynihan
Bradley	Hollings	Proxmire
Bumpers	Inouye	Pryor
Burdick	Johnston	Reid
Conrad	Kennedy	Riegle
Cranston	Kerry	Rockefeller
Dodd	Lautenberg	Sanford
Exon	Leahy	Sarbanes
Ford	Levin	Sasser
Fowler	Matsunaga	Simon
Glenn	Metzenbaum	Wirth
Gore	Mikulski	

NAYS—60

Armstrong	Evans	Nickles
Baucus	Garn	Nunn
Bentsen	Gramm	Packwood
Bond	Grassley	Pell
Boren	Hatch	Pressler
Boschwitz	Hatfield	Quayle
Breaux	Hecht	Roth
Byrd	Heflin	Rudman
Chafee	Heinz	Shelby
Chiles	Helms	Simpson
Cochran	Humphrey	Specter
Cohen	Karnes	Stafford
D'Amato	Kassebaum	Stevens
Danforth	Kasten	Symms
Daschle	Lugar	Thurmond
DeConcini	McCain	Tribble
Dixon	McClure	Wallop
Dole	McConnell	Warner
Domenici	Melcher	Weicker
Durenberger	Murkowski	Wilson

NOT VOTING—2

Biden	Stennis
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So the motion to lay on the table amendment No. 2317 was rejected.

The PRESIDING OFFICER. The Senator from Arkansas.

May we have order in the Chamber? The Senator from Arkansas has the floor.

Mr. BUMPERS. Mr. President, I thank you very much. I regret very much that this amendment, the Helms amendment, has gotten mixed up with something of a parliamentary problem and the feelings of the majority leader that at least if it was not said overtly, it was his understanding that there would not be a second-degree amendment and possibly not a tabling motion on the Helms amendment. I may be wrong, but I get the impression that the last vote is not a manifestation of the feelings of the Senate on the Helms amendment, but was a vote to demonstrate concern for, perhaps, the Senator from North Carolina having been wronged by a second-degree amendment being offered or tabling motion being offered before he had an opportunity to fully express himself and fully describe his amendment to the Senate.

Now that the amendment has not been tabled, the underlying amendment has not been tabled, there should be adequate time for everybody

to express themselves, especially the Senator from North Carolina if that is a problem for him.

I will just be very brief, Mr. President, in my remarks. We have been here now for 2 weeks on this treaty and to my knowledge absolutely nothing has happened in that 2-week period except to debate. Nothing has been adopted. No changes have been made in the treaty. And we are exactly where we started 2 weeks ago with a treaty that, in my opinion in the final analysis, 90 Senators will vote for. I may be wrong. But, so far as the Helms amendment is concerned, it violates everything that most of us in the Senate believe about this treaty.

First of all, the U.S. Senate does not have the unilateral right or power to issue a declaration on behalf of Congress. The Constitution gives this body the responsibility for advising and consenting to treaties, but it does not say that we can preempt the House of Representatives on questions such as what weapons systems we are going to build, whether we will discontinue building them after the framework of a treaty has been announced or whether or not the House and Senate will agree to interim restraints, which the House has already adopted on the DOD bill.

Mr. President, the Helms amendment really creates mischief. It is a mischievous amendment. It contradicts the Vienna Convention on Treaties, 1969, later ratified by this body, which says once you sign a treaty, you will not take unilateral actions to undercut its object and purpose.

Mr. President, you can hear it on every Law Day across the country, we are a Nation of laws, not of men. In order for this country to be a civilized place for all of us to live in, there must be order. It is that way in the schoolroom. You cannot teach children unless you have an orderly environment. You cannot have a society that is worth living in unless you have order, and you will never have a world that is decent and fit to live in until you have order. Even though international law is not always correct, it is always binding on us. We are entering into an agreement with the Soviet Union here that is absolutely crucial to the future of negotiations to get the nuclear arms race under control.

What do you think our President is doing in Finland right now on his way to Moscow? He is trying to develop an environment that will allow your children and my children to grow to adulthood.

There are some people who do not want a treaty of any kind with the Soviet Union under any circumstances, and that is their prerogative. I happen to be on the other side, but I also believe in national law and order, and I believe in international law and order, too. You ought to take the Senate into consideration, and from time to time during the deliberations on this treaty and on the START Treaty, Members

of this body have gone to Geneva and sat and watched the negotiations take place. To suggest, as the Helms amendment does, that you must give the Senate advance notice and make them a negotiating partner is really a usurpation of the President's prerogative.

Mr. SYMMS. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate is not in order. The Senators will take their seats. The Senator from Arkansas.

Mr. BUMPERS. Section (c) of the Helms amendment says, in effect, the verification procedures under the INF Treaty are inadequate. It says, in effect, do not come back to the U.S. Senate with another treaty unless the verification procedures are more stringent. That is what lawyers call a condition preceding. We are telling them how to negotiate the treaty. Again, a usurpation of Presidential prerogative. If it comes back here with inadequate verification procedures, then vote no on the treaty.

The Senate has no right injecting itself into the negotiating business. It has no business telling the President what kind of verification procedures we will accept. It has no business saying that nothing in any future treaty will keep us from going ahead with any weapons that we happen to be in the process of building.

Those are decisions that the House and the Senate together will determine in their own right. It would be folly in the extreme for the U.S. Senate to prejudge that and to try to take away the President's negotiating right. This is all pure sophistry. It is arcane; it not well drafted.

Every single provision in that declaration can be argued either way, and it is designed for that purpose. It is designed to allow you to argue it either way.

So I hope we have a healthy debate. I am not going to move to table. I am prepared to sit here all night and debate this issue. I would like to see the Helms amendment withdrawn or tabled. The Cranston amendment is designed to preempt the Helms amendment. Neither of them are really needed. So whatever it takes for this body to exercise its solemn responsibility in the treaty-making process we ought to do.

Mr. President, I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I ask unanimous consent—

Mr. COHEN. Will the Senator withhold?

Mr. BYRD. Yes.

Mr. COHEN. I would like to make a few comments.

Mr. BYRD. I was hoping we could set the amendment aside—and I will not make the request—set this amendment aside temporarily so that the

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Senators may work on it and let Mr. Wallop proceed with an amendment and get a time agreement on that amendment so the Senators will know what time there will be a vote and that will give them, hopefully, 1 hour. I can stack a couple of votes in this way. I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. Mr. President, I just want to take a few moments to share some of the concerns expressed by the Senator from Arkansas.

The PRESIDING OFFICER. If the Senator from Maine will suspend. The Senate is not in order. The Senate will come to order. The Senator from Maine.

Mr. COHEN. I thank the Chair. Let me just take a moment to articulate what the motivation is or the objective is by the sponsor of the amendment and some of us who may, in fact, support the amendment, if it is redrafted.

I have stood on the floor for several days now expressing some concern that we not understand what I believe will be an overwhelming vote in favor of the INF Treaty to send a signal to the administration that we might negotiate anything that would provide for substantial reductions without adequate verification measures.

We have all expressed those apprehensions. We recall, for example, how there seemed to be a rush toward an agreement at Reykjavik which scared a lot of us, including our allies.

There was some concern expressed that we not have the President rushing off to Moscow to sign an agreement without taking into account some of the genuine and legitimate concerns some of us might have. That is the framework, at least my frame of mind, within which I made the statements during the past several days.

With respect to the amendment that has been offered, I find some problems with it. I find some difficulties with subsection (c), as did the Senator from Arkansas.

I do not think it is the intent of the Senator from North Carolina to insist that the President of the United States tell us in advance everything he intends to do, even significant proposals he intends to make to Mr. Gorbachev during the negotiations.

I believe, for example, that that should be modified to say: "apprised of all significant proposals made to the Soviet Union." I also believe that section really ought to be crafted in a way that keeps in place the arms control observer group. That has worked well on INF. It should work well on START.

I think if that kind of a change is made, and others such as striking the word "plenary," that would deal with the issues raised by the Senator from Arkansas. I would also note that the Senator from North Carolina raised one of the very same issues as the Senator from Arkansas when Secretary Shultz testified before the Foreign Re-

lations Committee. The Soviets were accused of violating the provisions of the INF Treaty, and Secretary Shultz said they cannot because it has not been ratified.

The Senator from North Carolina correctly pointed out saying something to the effect: "Don't be too sure, Mr. Secretary, because there are international laws which prevent that from taking place, which obligate both countries from taking actions which would negate or nullify the very object and purpose of the treaty itself."

I think those changes can be made in the amendment and this resolution can in fact express the declaration on the part of a number of us who are concerned that we just not rush into an agreement without adequate concerns being devoted to the questions about verification and other matters.

So I would hope, Mr. President, that the amendment may be laid aside, that we can work out some of the changes suggested by Senator BRADLEY and myself, and that we could bring this back at a later time and deal with it at that time in a positive fashion.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, earlier this evening I spoke against the Helms amendment and in support of the amendment of the senior Senator from California which was later withdrawn. Then I voted against tabling because I felt the Senator from North Carolina did not have a fair shot to explain his amendment. I think it can be cleared up, or should be straightened out. Some of the suggestions that have come forward are good ones, and I do hope during the period it is laid aside it can be cleaned up and strengthened, some of the ambiguities removed and some of the language I found at fault, particularly in section (c), can be straightened out. So that was the reason I voted against the tabling motion.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER (Mr. SHELBY). The majority leader.

Mr. BYRD. I am going to ask that the amendment be temporarily laid aside. Did the Senator want to be recognized?

Mr. BUMPERS. No. Go ahead.

Mr. BYRD. Mr. President, I ask unanimous consent that the amendment by Mr. HELMS be temporarily laid aside until disposition of an amendment by Mr. WALLOP, on which there be a time limitation of not to exceed—

Mr. WALLOP. Mr. Leader, I think it will take less but some on my side have expressed a desire to speak, and I would at this moment in time be happy to settle for 80 minutes equally divided, with the hope that it would take less than that. But I want to assure people on my side who wish to speak on it to be able to do it.

Mr. DOLE. Will the majority leader yield?

Mr. BYRD. Yes.

Mr. DOLE. If there is no objection, I think we could follow that amendment with the amendment of the Senator from California, Mr. WILSON, under a 30-minute time agreement. And that would protect some who have to be away during this time period.

Mr. BYRD. These are amendments that have been enumerated.

Mr. DOLE. Yes.

Mr. BYRD. I ask unanimous consent that time for debate on the Wallop amendment be 80 minutes, to be equally divided and controlled in the usual form; that that amendment then be temporarily laid aside and that Mr. WILSON may call up his amendment, on which there be a 30-minute time limitation to be equally divided and controlled in accordance with the usual form.

If rollcall votes are ordered, I ask unanimous consent that those rollcall votes be stacked to begin not earlier than 9:30 p.m. and that the second and third votes, if they are immediate backup votes, be limited to 10 minutes each, and that the call for the regular order be automatic in each instance at the expiration of the time. Mr. President, provided further and finally that the vote on cloture which is now set for 8:30 today be waived until 10:30 this evening.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I thank all Senators.

AMENDMENT NO 2324

(Purpose: To provide for a United States response to possible violations of the INF Treaty)

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. WALLOP] for himself, Mr. KARNES, Mr. WARNER, Mr. GARN, Mr. MCCAIN, Mr. NICKLES, Mr. WILSON, Mr. GRASSLEY, Mr. THURMOND, Mr. MURKOWSKI, and Mr. SYMMS proposes an amendment numbered 2324.

Mr. WALLOP. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end to the resolution of ratification, add the following:

"The President shall not exchange the instruments of ratification unless, using existing power, he communicates to the Union of Soviet Socialist Republics, in connection with the exchange of the instruments of ratification of the Treaty, the following:

"(1) the declaration that the United States will consider any violation by the Soviet Union of its obligations under the Treaty, including any violation described in a report to the Congress by the President, pursuant to section 1002 of the Department of Defense Authorization Act, 1986, or any

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other notification required by paragraph (2), as grounds for undertaking appropriate responses or withdrawing from the Treaty, in accordance with the Treaty's terms and generally recognized principles of international law;

"(2) the reservation that, before the date of exchange of the instruments of ratification of the Treaty, the President shall agree to submit, every 12 months after the date of entry into force of the Treaty, to the Senate a report or an addendum to the report required by section 1002 of the Department of Defense Authorization Act, 1986, which—

"(A) contains a detailed net assessment of the overall trends in the strategic and theater balance, and the effectiveness of the Treaty and other arms control treaties in ensuring a stable nuclear balance that protects the security of the United States and its allies;

"(B) certifies whether the Soviet Union is in compliance with the Treaty;

"(C) if the President does not certify full compliance, contains a net assessment of the nature of the non-compliance, the reliability of the evidence and the vulnerability of the sources of that evidence to countermeasures, and the risks each detected or suspected violation poses to the security of the United States and its allies; and

"(D) upon request of the Select Committee on Intelligence of the Senate, discusses the question of compliance raised by any intelligence information notified under paragraph (3);

"(3) the declaration that, the Director of Central Intelligence should transmit to the Select Committee on Intelligence of the Senate any finished analysis of intelligence information which raises questions about whether Soviet activities are in compliance with the Treaty"

"(4) the declaration that, whenever the President submits to the Senate a report pursuant to paragraph (2) or a report pursuant to section 1002 of the Department of Defense Authorization Act, 1986, that describes a violation by the Soviet Union of the Treaty, and he decides not to withdraw the United States from the Treaty, the President should certify to the Senate, not later than 90 calendar days after the Senate receives such a report that either—

"(A) he is undertaking appropriate responses to any such Soviet violation, which certification will detail the specific actions being taken in response to the Soviet violation; or

"(B) the Soviet Union has returned to compliance with the Treaty, which certification will provide a description of the actions taken by the Soviet Union to return to compliance;

"(5) the declaration that, the Treaty should no longer continue to remain in force with respect to the United States if the Senate adopts a resolution by majority vote that disapproves the certification submitted by the President pursuant to clause (A) or (B) of paragraph (4), as the case may be; and

"(6) the declaration that, if the President announces the intention of the United States to withdraw from the Treaty or to take appropriate responses to Soviet violations, he should obligate or expend funds to protect the interests of the United States and its allies under such circumstances as the Congress may specifically make available to him for those purposes".

Mr. WALLOP. Mr. President, on behalf of myself and Senators KARNES, WARNER, GARN, MCCAIN, MCCLURE, NICKLES, WILSON, GRASSLEY, THURMOND, MURKOWSKI, and SYMMS, I offer this amendment. At this moment, Mr.

President, I yield to the chief cosponsor of the amendment, Senator KARNES, for his opening statement.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KARNES. Thank you, Mr. President.

Mr. President, the amendment just called up will establish a mechanism for effectively responding to Soviet violations of the INF Treaty. First, let me describe the content of this amendment and then I will discuss the specifics of it in more general terms later.

This amendment is a category II reservation and will not require renegotiation with the Soviet Union.

First, the amendment declares that the United States will consider any violation of the treaty as grounds for undertaking proportionate responses or withdrawing from the treaty. This language is a simple reiteration of accepted practice under international law for responding to noncompliance by a treaty partner. While this language is a firm statement of policy, it does not require this administration or any future administration to take any specific action in response to a Soviet violation, which is reported pursuant to an annual reporting requirement established by this amendment or pursuant to the existing requirement for reporting arms control treaty violations. The language only establishes that it is the policy of the United States that such violations will be grounds for responding, either with a proportionate response or by withdrawing from the treaty.

Second, the amendment sets forth the reservation that the President must agree to submit to the Congress a report every 12 months after the date of entry into force assessing the status of the treaty with regard to Soviet violations. The report may also be submitted as an addendum to the arms control compliance report required by existing law. This report, or addendum, is to include a net assessment of the overall trends in the strategic and theater balance, as affected by military developments and arms control. Also, the report is to contain a statement of the risks a detected violation poses to the security of the United States and its allies, if a Soviet violation is found. Finally, the report must address questions of compliance that are of concern to the Senate Intelligence Committee. The final provision in this reporting requirement pertains to another section of this amendment, which I will discuss in a moment. While the President's report must address the topic of concern to the Senate Intelligence Committee, it is not essential that the Soviet activity in question be assessed as a violation. The final determination about whether any particular activity of the Soviet Union constitutes a violation of the treaty still rests entirely with the President.

As I stated a moment ago, the Senate Intelligence Committee may

request the President to touch upon a question of Soviet compliance in the annual report. The third provision of this amendment declares that the Director of the Central Intelligence Agency should transmit to the Senate Intelligence Committee any finished intelligence which raises questions about Soviet compliance with the INF treaty in a timely fashion.

The fourth provision of this amendment declares that when the President determines that a violation to the INF Treaty has occurred, he should either certify that he is undertaking proportionate responses to the Soviet violation or certify that the Soviet Union has returned to compliance, assuming of course he decides not to withdraw the United States from the treaty, as he is always allowed to do. Such a certification, whether it be one outlining appropriate responses or asserting that the Soviet Union has returned to compliance, should be submitted not later than 90 days after the President reports that a violation has occurred in the annual report.

The fifth provision of this amendment also consists of a declaration. It states that after the President certifies that he intends to undertake responses or certifies that the Soviet Union has returned to compliance, the Senate may, but is not required to, adopt a resolution disapproving his proposed actions. If such a resolution is adopted, it is the intent of this amendment that the treaty should no longer remain in force with respect to the United States.

The final provision of this amendment states that if the President announces that it is the intention of the United States to withdraw from the treaty or undertake proportionate responses to Soviet violations, he may obligate or expend funds to protect the interests of the United States as Congress may make specifically available to him for those purposes. It is the intention of this Senator, perhaps on a future Department of Defense authorization bill, to offer an amendment that establishes a contingency fund for responding to Soviet violations of arms control treaties. Of course, no such funds are authorized or appropriated here.

In sum, Mr. President, this amendment is simply a mechanism or procedure for developing a proportionate response policy. Its purpose is to ensure that the United States will respond if the Soviet Union fails to comply with the terms of this treaty. It does not, however, attempt to prescribe specific responses to hypothetical Soviet violations. Thus, the amendment provides the flexibility required for responding to future Soviet violations of the INF Treaty in a prudent and reasoned manner. Nevertheless, it states that the United States's respond in some fashion when a Soviet violation is found and not just stand idly by.

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I would like now to turn to some of the implications of this proposal. Since it is likely that some of my colleagues will have specific concerns about the amendment, in anticipation of those concerns I am going to discuss what this amendment does not require.

First, as I stated at the outset, this reservation does not require renegotiation of the treaty. In fact, no party external to the Government of the United States is affected by this language in any way, other than to assert the established rights of the United States under international law. The Soviet Union should have no objections to this language, and in fact I would argue that Soviet attempts to alter a proposal of this sort would constitute a violation of the sovereign rights of the United States.

Second, there is nothing in this language that will require the United States to do anything that is at odds with accepted practice under international law. The language has been drafted so that this administration and future administrations can plan and undertake actions in response to Soviet violations that are consistent with international law. The purpose of the language, in fact, is to ensure that the United States takes advantage of its rights under international law.

Third, the scope of this amendment is generally limited to the INF Treaty and is prospective in nature. It does not require the President to certify that the Soviet Union is in compliance with all existing arms control treaties before this treaty may be ratified. Thus, this amendment should in no way cause undue delay in the ratification of this treaty. While there is language in a reporting requirement that does touch upon other arms control treaties in the form of a net assessment, the response mechanism is limited to the INF Treaty.

Fourth, this language does not imply that there are fatal flaws in the text of the INF Treaty as some have argued. Thus, a vote for this amendment should by no means be interpreted as a vote against the treaty. In fact, this Senator plans to vote in favor of granting consent to the ratification of this treaty, assuming objectionable language is not added to it in the course of Senate consideration. While other Senators may believe that the treaty is flawed in several respects, these objections are not the concern of this amendment. In general, what this amendment says is that this treaty is fine on paper, but let's make sure that we pay close attention as to how it is implemented.

Fifth, this amendment is not an attempt to tie the hands of the executive branch as it carries out its responsibilities for implementing the treaty. This language has been drafted to give the executive branch broad discretion in addressing future violations of this treaty. The responsibility for finding and reporting a violation would rest

exclusively with the executive branch. Broad discretion for deciding how to respond is retained by the executive branch. The role of the Senate under this language is a relatively narrow one. Its role is to pass judgment on whether the President's proposed response to a reported violation is strong enough to protect the interests of the United States, given the nature of the Soviet violation. Thus, the executive branch will retain the responsibility for detecting violations and may choose from an unrestricted list of options for responding to a violation. Finally, the enforcement mechanism established by this amendment comes in the form of a declaration. Thus, it is a statement of intent as to how the United States will respond to a violation and is not legally binding.

Mr. President, the failure of the Soviet Union to fully comply with past arms control agreements poses a serious threat to the entire arms control process.

The President's report on Soviet noncompliance with arms control agreements, issued on December 2, 1987, states that the Soviet Union is in violation of the ABM Treaty, the biological and toxin weapons convention, and the limited test ban treaty. The administration also states that the Soviets may be in violation of the Helsinki Final Act's arms control provisions. While not all these violations pose an immediate security threat to the United States and its allies, they deserve the attention of the American people. We should be prepared to take all appropriate actions to ensure that the Soviet Union lives up to its obligations.

We have a direct interest in defending the integrity of the arms control agreements that have been the object of the administration's negotiations with the Soviet Union over the last several years, and this INF Treaty is no exception. This agreement will have an important impact on our security and the security of our allies for the foreseeable future. We must not allow these agreements to become a tool for the Soviet Union to weaken the position of the United States. The amendment before us now is designed to prevent this treaty from becoming just such a tool.

I should also point out that public opinion seems to support establishing a prudent policy for responding to Soviet violations. In January of this year market opinion research undertook a survey of 1,000 Americans to get their views on issues related to national security. This survey resulted in a report called Americans Talk Security. According to the report, 55 percent of those interviewed said that the Soviets could not be trusted in the area of nuclear arms control. Further, 71 percent of those interviewed stated that if the Soviets do not keep their part of arms control agreements and the United States keep its part that it would put the United States in a dan-

gerous position. A later survey in this same series states that 54 percent of Americans believe that the President should be required to certify that the Soviet Union is in compliance with all past arms control agreements before the INF Treaty should take effect, even if such a requirement would kill the treaty. The result of this survey make it clear to me that the American people want the United States to respond swiftly and effectively to Soviet treaty violations.

While I believe we should applaud the Reagan administration for what it has achieved in the area of arms control with this treaty, we should also make it clear to the American people that we will protect both the integrity of the agreement and the security of the United States. This body should state unequivocally that it supports a policy of responding swiftly and effectively to Soviet violations of arms control agreements. This amendment attempts to establish such a policy.

Mr. President, arms control treaties can have enormously important implications for the security of the United States. Success in foreign policy is most often based on vigilance and arms control is no exception to this rule. The United States must be vigilant in protecting the security of the United States in implementing arms control agreements. President Reagan has already demonstrated considerable vigilance in arms control negotiations. The same vigilance should be demonstrated after arms control agreements, such as this INF Treaty, come into force. It must be remembered that the contributions of successful arms control are derived from the actual implementation of agreements and the elimination of weapons. The signing of an agreement is that start, not the end, of successful arms control. As we move forward with this treaty, we also have a responsibility to focus the attention of the American people on ensuring that the Soviets live up to their obligations. This amendment will discourage the Soviets from violating this treaty and ensures that action will be taken if the Soviets do violate the treaty. Thus, Mr. President, I urge my colleagues to support this reservation. Mr. President, I yield the floor.

Mr. COHEN. Mr. President, will the Senator yield for a question?

Mr. KARNES. Yes.

Mr. COHEN. I was interested in a few points in looking through the amendment, and I have not had a chance to study this in depth yet, but particularly I am concerned about page 3, subparagraph (3), where it says in the declaration that "the Director of Central Intelligence should transmit to the Select Committee on Intelligence of the Senate any finished analysis of intelligence information which raises questions about whether the Soviet activities are in compliance." I would defer to other people's judgment on this. But my understanding is

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that the Director of Central Intelligence is not charged with making judgments or decisions as to whether or not this is compliance or noncompliance but, rather, he submits that intelligence information to the State Department, ACDA, an interagency group, to the NSC, or the President.

It seems to me we ought to be very careful before we start mandating the Director of Central Intelligence start, upon requests from the Intelligence Committee, sending information about possible violations. We are now putting him in the position of not only monitoring but making qualitative judgments about compliance here which I think would be a mistake.

Mr. WALLOP. Mr. President, if the Senator from Maine will yield, I will respond. It does not call for judgment on the part of the Director of Central Intelligence, only that he provide them with any finished analysis of information which raises questions. This was carefully constructed with some members of the staff of the committee of which the Senator is vice chairman.

It is designed specifically not to put the DCI into the business of judging whether the Soviets are in compliance, but providing analysis which raises questions about their possible non-compliment activity.

Mr. COHEN. I thank the Senator for his comments. I would like to pursue this a little bit further at a later time, so the Senator from Wyoming has a chance to address his own remarks to the amendment.

But also in subsection (4), it states "and he decides not to withdraw the United States from the Treaty." It seems to me the implication of that statement is that the President can decide to withdraw. As I recall, Senator Goldwater, of Arizona, went through some legal contest as to whether or not a President can unilaterally decide to terminate a treaty and ended up in court on that. The Supreme Court did not take the question largely because it was a political question. But it seems to me the implication of that statement that "he decides not to withdraw" means that he can decide to withdraw. I think that is going to entangle us in some kind of a legal analysis here. I would refer my colleagues to a document on this question which I included in my remarks yesterday; it appears on page S6570 of the Record for May 25.

Mr. WALLOP. The President of the United States can make such a decision. Whether he can accomplish it or not may be subject to the reaction of the Senate as a matter of some constitutional question. But clearly he can make the decision. Whether he can accomplish that or not is not particularly relevant.

Mr. COHEN. The way in which it is phrased implies the possibility that "He decided to withdraw."

Mr. WALLOP. He can make that decision. Whether he can get it accom-

plished or not is another story. But he can certainly make that decision.

Mr. COHEN. The Senator is not implying he can unilaterally withdraw?

Mr. WALLOP. No such thing. He has the decision. He is providing his decision as to what is the proportionate response. If you read the rest of the amendment, you will see the Senate gets involved in things like that.

Mr. COHEN. I thank the Senator for his comments. I still have some question about subsection (3). We are indeed, I think, creating at least the appearance that we are politicizing the intelligence process by requiring—

Mr. WALLOP. I would suggest if the Senator is going to oppose the amendment—as his line of questioning suggests—he begin to seek time from the other side because with all respect we did just expand the time available in order to try to accommodate some on this side.

Mr. COHEN. I thank the Senator.

Mr. WARNER. Mr. President, I ask the distinguished Senator from Wyoming for 4½ minutes.

Mr. WALLOP. Mr. President, I will yield 5 minutes to the Senator from Virginia. But let me just state my personal appreciation to the Senator from Virginia, and Mr. BRADLEY and his staff who have worked with us a long time. It is noted that Senator BRADLEY is not a cosponsor. But it is an amendment which we took considerable pains owing to a remarkable op/ed piece which he had in the New York Times suggesting that it was not responsible to enter into a treaty without some kind of an idea in mind that there would be a response to violations.

I yield the 5 minutes to the Senator.

The PRESIDING OFFICER. The Senator from Virginia is recognized for 5 minutes.

Mr. WARNER. Mr. President, I thank my distinguished colleague from Wyoming. Indeed he has been most cooperative. I know how strongly he feels about this subject because it is not the first time he has risen in this Chamber to express his dissatisfaction with the pattern of Soviet treaty non-compliance of arms control agreements. Out of my respect for him and for the content of his amendment, I rise in support of this amendment on which I am now a cosponsor.

Over the past months in the Senate, through primarily committee action and now through extensive floor debate and deliberation on the treaty, we have heard much criticism of the fact that we are considering a treaty, the INF Treaty, at the same time the Soviets are in violation and probable violation of other arms control agreements.

Indeed, during the course of our deliberation of this treaty, we have had six votes on various compliance amendments to the treaty, all of which were voted down by wide margins. I participated in the votes against

those amendments. I disagreed with these particular amendments, for I believe that, on balance, this treaty is in our interests, irrespective of the regrettable Soviet noncompliance with other treaties. But I also believe that we have an obligation, as we are about to adopt this treaty, to send a very clear signal to the Soviet Union that we will not tolerate further noncompliance, either with this treaty or with other arms control agreements.

Thus, I believe we need to demonstrate dissatisfaction with Soviet non-compliance and our resolve not to stand for violations of the INF Treaty. For this reason, I support this amendment. It is, on balance, the most effective and most constructive amendment to date on this subject.

Let us be clear that this amendment does not bind the President. In fact, it coincides in many ways with the recommendation of the Senate Armed Services Committee, section 912 and 913 of its fiscal year 1989 defense authorization bill, which is an amendment to section 1002 of the 1986 Department of Defense authorization language, and which is referred to in the Wallop amendment.

The Armed Services Committee I might add also expresses the sentiment in its committee report on the INF Treaty, as clearly on record as being dissatisfied with Soviet noncompliance. This amendment, therefore, gives the Senate a vehicle in which to express its dissatisfaction with Soviet Union violations at the same time not threaten the treaty's ratification. I commend the distinguished Senator from Wyoming.

Mr. WALLOP. I thank the Senator from Virginia. I appreciate the help I have had from him and his staff as we have sought to do this.

It has not been my intention to have this a killer amendment, but simply to recognize that, for all the proud boasts of verification regimes in this treaty, there has been no expression of a desire to enforce the terms of the treaty. This amendment is merely that expression.

It does very little binding on the President of the United States. There is only one thing binding, and it is the requirement of a report. It does not ask him to undertake specific responses or any such thing. It says we should indicate our seriousness about the Soviet Union's commitments as well as our own under the terms of this treaty.

It recognizes that our track record and our experience with the Soviet Union under these previous agreements has not been satisfactory.

In point of fact, there is new evidence of violations of the ABM Treaty, as we speak. There have been violations of the Biological Weapons Convention, Limited and Threshold Test Ban Treaties, the SALT II Treaty. Indeed, one of the principle violations of the SALT II Treaty, as

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the Senator from Wyoming has expressed before, is enshrined in the INF Treaty. So it says that we are serious about this.

The Senator from Wyoming and the Senator from Virginia would much prefer to have the Soviet Union in compliance before we enter into this. My view is that in addition to asking us to give consent to ratify this treaty, the President of the United States, absent some expression of compliance, is asking us to give our consent to past Soviet behavior and license to future Soviet behavior. This says we do not license them.

The Senator from Wyoming would have much preferred harsher language, but in the interests of trying to get this along as a category II amendment and to get some expression by the Senate of the United States in response to the people of the United States, who genuinely believe there ought to be compliance, that it ought not be based solely on trust, that there ought to be some responsive action, I hope this amendment will be adopted by the Senate.

Mr. President, at this moment, before continuing my remarks, I yield 7 minutes to the Senator from Arizona.

Mr. WARNER. Mr. President, will the Senator yield me 1 minute?

Mr. WALLOP. I yield.

Mr. WARNER. Mr. President, I am grateful, as are all Senators, for the Senator from Wyoming mentioning the participation of our staff. I would particularly like to commend my staff member, Brian Dailey, who joined the Senate Armed Services Committee just 4 months ago. He came from the Naval postgraduate school, where he was a professor for several years on subjects relating to national security affairs. He collaborated with members of the staff of the Senator from Wyoming and the staff of Senator BRADLEY as well as others. He has worked tirelessly for the Senate Armed Services Committee during the deliberations on the treaty, and we owe him a deep sense of gratitude.

Mr. WALLOP. He and others have been very helpful.

The Senator from Wyoming wishes to express again that this is not intended to be a killer amendment, but an expression of the seriousness of the United States with regard to the Soviet Union's performance under the obligations of this treaty.

I yield 7 minutes to the Senator from Arizona.

Mr. McCAIN. Mr. President, I thank my friend from Virginia for his support of this amendment. It lends a great deal of credibility to it. I appreciate his kind remarks concerning these efforts, and I join him in complementing the efforts of the Senator from Wyoming.

There is no Member of this body who has shown a greater concern or a greater expertise on the issue of Soviet violations and noncompliance with

previous treaties than the Senator from Wyoming. I recognize very well, as we all do, that the Senator from Wyoming would like to have seen much stronger language in this amendment. But, for the sake of receiving the widespread support that I think this amendment enjoys, he has agreed to tone down many aspects of this amendment that he would like to see and have liked to have seen included.

At the same time, this amendment still addresses several vital issues applying to both the INF Treaty and the future of arms control.

We need to remember that at this point in our deliberations, the issue is not one of whether to ratify the INF, but rather one of how we deal with the treaty we are about to ratify and with the future of arms control.

This amendment is not designed to block the INF Treaty in any way. It is not designed to block further arms control. Quite to the contrary, it is designed to ensure a stable and cautious approach to arms control that can build a solid consensus around a process that will grow far more difficult as we move toward START and conventional force reductions.

I realize that there are a few people in the NSC and State Department that may have forgotten what happened to SALT. I suspect these same people do not really understand how fragile the consensus behind this treaty really is, and the risk of nonratification or delay that the INF Treaty would have encountered if it had been sent forward by any President other than President Reagan.

These people will ultimately do far more to hurt the cause of arms control than to help it. The present consensus on arms control can dissolve overnight if we do not have a more realistic approach to reporting on compliance and deterring Soviet violations, if we cannot build a consensus around an arms control strategy that looks beyond "summitry" and day to day negotiations, and if we cannot tie our arms control activities to a clear perception of the impact of arms control on the military balance and on our security.

It is important to note that no arms control treaty can ever avoid some ambiguities in its wording, specify detailed penalties for every violation, or create a foolproof mechanism for defining the nature and seriousness of every possible violation. We have tolerated many failings and uncertainties in the INF Treaty, and we will have to tolerate at least some major uncertainties in any further arms control treaty.

The only practical alternative to a perfect treaty is a greater confidence within this body that we can trust both the arms control process and the compliance process. This is particularly true because a treaty like the START Treaty will affect our very survival as a nation, while convention-

al arms control will affect the very survival of our closest allies.

The INF Treaty is the practical limit of what the West can accept in the form of arms reductions whose main effect is political symbolism.

Any future reductions in strategic nuclear arms, conventional arms, and NATO's remaining theater nuclear arms must come to grips with the three real goals of arms control: Reducing the overall arms race and the instabilities in the military balance, reducing the risk of war, and reducing the cost of war if deterrence fails. Above all, they must provide the West a firm assurance that a higher level of deterrence will exist after such reductions than before the reductions take place.

We can deal with these issues without delaying ratification of, or adopting "killer amendments" to, the INF Treaty. This is why I am proud to be a cosponsor of the amendment we are discussing here today.

While some of this language in this amendment is already in the Defense Authorization Act, I believe that we need to go further, and to provide stronger wording regarding the enforcement of our arms control treaties and a warning to the U.S.S.R. that it must negotiate in good faith.

This amendment will accomplish that purpose in several important ways. It will establish more stringent procedures in dealing with arms control violations, it will ensure that timely intelligence reporting on any violation is given to the Congress in a form that will ensure that the Congress can act, and it will ensure that future arms control agreements are part of a strategy that focuses on reducing the risk and cost of war, and not simply on weapons numbers or immediate political advantage.

The first major step this amendment makes in the arms control process is to ensure that the West will publicize all Soviet violations and react with suitable countermeasures. This amendment provides a legal mechanism that goes beyond the current narrow focus on the technical details of verification and compliance and which can ensure that no Soviet violation is disguised or ignored because of a desire to preserve the overall climate of East-West relations or domestic political convenience.

It puts the U.S.S.R. on notice that it will face formal and public U.S. reaction to each violation, and we need to ensure that we use the Congress and Western public opinion as a deterrent to any Soviet violations or sudden buildup in military capability. It expands the current annual compliance report on arms control treaties with the U.S.S.R. to give this report real teeth.

The second major step this amendment makes in improving our approach to arms control is to create a comprehensive arms control strategy

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that will be regularly updated, force the administration and Congress to work toward a consensus, and educate public opinion in the United States and allied countries.

It requires the President to submit an annual report to the Congress that would provide a detailed and comprehensive statement of U.S. arms control strategy on all existing and prospective arms control treaties and negotiations. It would specify the nature and sequence of an administration's future arms control efforts.

This report would describe how the United States will approach strategic, conventional, and additional theater nuclear force reductions. It would provide a comprehensive net assessment of the current trends in the military balance as they affect arms control.

It would include a comprehensive data base on the forces on both sides affected by the arms control treaty, it would specify the methodology used to analyze them in full detail, it would provide the results of both static and dynamic methods of analysis, and it would examine all major scenarios and contingencies ranging from political confrontation to full scale war.

The report would assess the military impact of arms control proposals and would explain the level and impact of U.S. arms control proposals on the risk and cost of war in typical contingencies or scenarios.

It would show the impact of proposed subceilings, asymmetries, and other driving factors affecting a treaty or arms control proposal on the military balance, and show how these act to increase deterrence and to reduce the risk and cost of war.

It would describe the strategy the United States will use to verify and enforce proposed arms control treaties. It would describe how the United States will consult with its allies and tailor its force improvement strategy to ensure it can preserve national security with and without arms control.

We need to take these two steps to ensure that the present treaty will be complied with and to ensure we fully understand the degree to which it does and does not ensure a secure level of deterrence and reduce the risk of war.

More importantly however, we need to lay the groundwork for the kind of arms control process that is vital in the future. The fact we need to face, as we go beyond the INF Treaty, is that the West's competition with the U.S.S.R. in arms control will be a long and difficult process, and that the most serious risk it will face is the U.S.S.R.'s ability to exploit political divisions within the United States and other Western nations.

Some divisions are inevitable. There will always be differences between liberals and conservatives, and among the nations of the West, as to the best way of dealing with verification and enforcement and with arms control strategy.

The challenge we face is to find ways to limit those differences and to use them constructively, rather than allow the Soviet Union to exploit them. To do this, we have to work toward a consensus on key issues and we must do so in an open and democratic way.

If we do not establish a clear arms control strategy and trust in our compliance procedures, we are almost certain to see the left and right polarize. We are likely to see domestic politics force unilateral cuts in modernization, manpower, and forces in anticipation of arms reductions.

We also are likely to see the U.S.S.R. split the West by exploiting its lack of cohesion and national differences, and we may well destroy any serious interest in arms control by creating so many opportunities for political opportunism that the U.S.S.R. cannot resist exploiting them.

This amendment will accomplish that purpose. It will ensure that the Congress can act in concert with the executive branch, it will help build a bipartisan approach to arms control, it will help create a consensus within the United States and between the United States and its allies, it will help deter any treaty violations, and it will help build a consensus in the West.

Mr. President, I urge the adoption of this amendment.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. The Senator from Iowa wishes me to yield 4 minutes.

The PRESIDING OFFICER. The Senator from Iowa is recognized for 4 minutes.

Mr. GRASSLEY. Mr. President, I rise in support of the reservation because it addresses what I, and many of my colleagues feel, is one of the major flaws of this treaty: the lack of a viable compliance policy.

This reservation is an attempt to rectify this omission.

All of the verification procedures, regardless of how technically sophisticated or involved, are useless if there is not a will to take positive action when faced with the reality of evasion or outright violation on the part of the Soviets.

We all know the record of Soviet adherence with international security agreements. It has been one of selected compliance, evasion and violations.

We have repeatedly heard the litany of Soviet arms control violations listed by distinguished Senator after Senator in remarks made before this body during this INF debate.

Senators have pronounced that they are aware that the Soviets continually cheat and cannot be trusted to comply fully with arms control pacts.

In a series of statements before this body, this past week, I have examined the history of noncompliance with arms control agreements by totalitarian regimes in the pre-World War II era. When these governments saw an opportunity to gain military or politi-

cal advantage, they violated or ignored the treaty with impunity.

The Versailles Treaty, the 1922 Washington Naval Agreement, and the Anglo-German Naval Pact of 1935 were all treaties that lacked a positive compliance policy and/or the democracies involved lacked the will on the part of the democracies to invoke one.

And the refusal to act on the part of the democracies served only to embolden the totalitarian regimes to further violations. History reminds us of the disastrous results from this failure to act.

I also listed in previous remarks the dismal record of Soviet noncompliance with arms control pacts.

The results are obvious to anyone who looks closely at the issue.

In dealing with totalitarian regimes, we can, and should, expect them to evade or violate an arms control treaty.

Yet, given this reality, Mr. President, there is no positive compliance policy in this treaty. There is nothing there that says to the Soviets, if you commit certain transgressions, we will respond with in appropriate way". To make this treaty work, the Soviets have to know that the "cost of cheating" will exceed any benefit to be gained by such action.

In the absence of such a compliance mechanism in the treaty, this reservation is an attempt to provide one.

It sets the framework for the President to respond with proportional action to Soviet violations and for the Senate to be given the opportunity to approve or disapprove of the President's actions by resolution.

This reservation will not affect the treaty other than to put the Soviets on notice that noncompliance will not be tolerated.

It will not require renegotiation of the treaty with the Soviets. It is meant to demonstrate that the United States will not ignore evasions and has the will and the tools to act.

We all saw how quickly the verification issues were resolved when there was a "quid pro quo" threat that we could hold over the Soviet Union.

In this case, the threat was holding up debate on this treaty until the verification issues were resolved.

This reservation will help put some teeth into this treaty, to show the Soviets that there will be an effective compliance policy conducted by the President and supported by the Congress.

Mr. President, we have seen the results of the past, and treaties that did not have a viable compliance policy.

Such an omission or the lack of a will to act invariably produced violation after violation.

This reservation is an effort to correct this flaw in this treaty by setting up a policy that presents the President and Congress as a united front against Soviet noncompliance.

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I urge adoption of this reservation, Mr. President. We should not accept this treaty without a viable compliance policy and of course we must also have the will to enforce it. This reservation will have a twofold benefit.

It will show our resolve to make the Soviets comply with the INF Treaty, and put them on notice that in negotiating a workable START Treaty we will demand a positive compliance policy.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Nebraska.

Mr. EXON. I yield myself 10 minutes of the 40 minutes we have on our side.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I am most delighted that the conference on the floor of the Senate has broken up because as important as that discussion was on the floor of the Senate, we have before us now a worse amendment, in my view, than the amendment that has caused a great deal of time and furor in the Senate over a parliamentary procedure.

I want to start out by saying that I find myself in an unusual position again. Here I am carrying the load for the administration when that should befall some of the other Members of this body.

The chairman of the committee will be back very shortly and will undoubtedly have some things to say about this. I just want to lay some of the groundwork before he makes those comments.

I suspect that the authors of this amendment do not fully know and understand what they are about to do.

I agree with the general thrust of what they are trying to do with the amendment, and many of my friends and colleagues, including my colleague from Nebraska, are in support of this amendment. I am going to try to convince them that at best this amendment should be withdrawn because at worst it would be added as part of the treaty.

Having said that, let me state that this is not a killer amendment, and let me make that clear. This amendment could go on the treaty. It would not necessarily have to be renegotiated or approved by the Soviet Union. It would send some warning to them in some certain areas that might get their attention, but I suspect it would not.

Mr. WALLOP. Mr. President, will the Senator yield for an observation?

Mr. EXON. Mr. President, I shall not yield and I will not yield. I will retain the right to the floor.

I would remind those on his side that I have very carefully and patiently listening as they used up their time,

and I intend to do likewise on this side.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President I was trying to say that this is a good cover because we are all very much concerned about the treaty compliance record of the Soviet Union in the past. The main difference, I guess, between myself and my colleagues on that side of the aisle that are presenting this is I just have a little bit more faith in President Reagan or President Bush or President Dukakis than they evidently do. I think they are all great Americans. And I do not think that we need this kind of language in a treaty that is a fight that is being carried on over what the Soviets do or do not do between the United States Senate and the President of the United States. And the Soviets, in this case, are pretty much bystanders.

What this is addressing, Mr. President, is how and when and under what circumstances should the United States dictate before a treaty is put into effect what the President is going to tell the Soviet Union in this regard as he exchanges the final document with them.

There are many reasons that this should not be put forward. Even before I knew that this measure was opposed by the administration, before I knew that this amendment was opposed by this administration's Secretary of Defense and before I knew that this amendment was opposed by the Chairman of the Joint Chiefs, I was opposed to it for a very simple and fundamental reason.

I would cite that the amendment now before us, in paragraph (5), says:

The declaration that, the treaty should no longer continue to remain in force with respect to the United States if the Senate adopts a resolution by majority vote.

Now let me recite that again, Mr. President.

If the Senate adopts a resolution by a majority vote, that disapproves the certification submitted by the President, and so forth. So what we have here, Mr. President, probably unbeknownst or not fully understood by the authors of this amendment is that we are going to require 66 votes to pass a treaty by the U.S. Senate but, in this amendment, a majority vote could take us out of the treaty.

Now, I suspect that the framers of the amendment did not know, did not realize, or did not think that through. I would simply say to them that the amendment is faulted for many reasons, but for that reason alone it should not be part of this treaty. At an appropriate time, before we table or take other action that I think we feel we must take on this, we might give a proper chance for those who offered this amendment to withdraw it and forget about it on this treaty and come up maybe in the future with something that we could all get behind with regard to our instructions and

feelings that could be expressed by a sense-of-the-Senate resolution of some type to the President of the United States with regard to what we feel he should or should not be doing.

I do think, though, that when we have disputes in a democracy between the President of the United States and the confirming body on treaties, the Senate, that we should keep that infamily fight between ourselves and not involve the Soviet Union because, from their past experience, I do not think they would be particularly helpful in settling the differences between the U.S. Senate and the President of the United States, whoever that is.

Mr. President, let me go through some of the statements that came up during the hearings on this treaty. I cite from the record a statement from Secretary Carlucci, February 1 of this year. The question of Secretary Carlucci:

Do you think the Senate should condition its approval of a treaty on some kind of guaranteed response? What would be the risks of such conditions?

Answer:

We do not believe that such a condition is necessary or useful. We would hope that Congress would express its willingness during the INF Treaty debate to work closely with this and future administrations in reaching agreement on responses which would be appropriate should Soviet violations of the INF Treaty occur.

We would wish to determine our response on a case-by-case basis as actual problems are unlikely to fit hypothetical scenarios determined in advance. Consequently, we require the flexibility to deal with compliance issues as they might arise, and need the cooperation of Congress in implementing the appropriate response.

Mr. President, I wish to cite further from the record. I have just read from the Secretary of Defense, who I think most would consider an expert in this area and one who is not soft in any way, shape, or form on the compliance that we expect the Soviets to live up to.

In this case it is from the Chairman of the Joint Chiefs, February 4, 1988. In response to questions posed by Senator PELL along the same lines of the questions that I just read that was addressed to Secretary Carlucci, here is what the Chairman of the Joint Chiefs said in this regard:

We would wish to determine our response on a case-by-case basis as "real world" problems are unlikely to fit hypothetical scenarios. Consequently, we require the flexibility to deal with compliance issues as they might arise.

The PRESIDING OFFICER. The Senator from Nebraska has used his 10 minutes.

Mr. EXON. I yield myself whatever additional time I might need. I would ask the Chair to advise me if I go beyond another 10 minutes.

Continuing the quote from the Chairman of the Joint Chiefs:

Should a Soviet violation be detected, the appropriate response would depend on a timely assessment of the effect the specific

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violation would have on the military balance. Predetermined response criteria would narrow the assessment and limit both its value and impact. An appropriate response to Treaty violations should be determined on a case-by-case basis and predicated on a comprehensive assessment of a host of complex security considerations.

Mr. President, I would like to continue with a whole series of thoughts in opposition to this amendment that have been provided to us by the administration, who, after all, are the ones who are over there or will be over there in the next few days exchanging these final documents, we hope, with regard to the INF Treaty. So these are points that the administration have brought up, in addition to the points in opposition that I have already raised.

The reservation proposed by Senator Wallop on treaty compliance reflects the concerns not only of the Senate, but also of the Administration over the Soviet pattern of non-compliance with earlier agreements.

We are united on the need to be vigilant in monitoring Soviet compliance with the INF Treaty's provisions and to continue to press for resolution of Soviet non-compliance with previous arms control agreements.

With respect to the proposal in the Wallop reservation that the President submit an annual report on Soviet compliance with the INF Treaty, it should be recalled that the President is already required to submit reports each year on Soviet compliance and non-compliance with all arms control agreements.

These annual reports are lengthy, detailed documents which have had a record of candor and thoroughness in discussing Soviet violations or possible violations of arms control agreements.

In the Administration's view, these annual reports are more than sufficient for conveying to the Senate the kinds of information about Soviet performance envisaged in the Wallop Amendment.

Another case where the amendment seems redundant.

With respect to the proposal in the Wallop resolution that stipulates procedures for responding to Soviet violations, this is neither necessary nor desirable.

These are the words of the administration not mine.

Article XV, para 2 of the Treaty gives the U.S. the right to withdraw from the Treaty "if it decides that extraordinary events related to the * * * Treaty have jeopardized its supreme interests."

Additionally, international law permits the U.S. to withdraw from the Treaty immediately in the event of a material breach of the provisions of the Treaty.

The Administration clearly contemplates close consultation with the Senate in case the Soviets fail to comply with the INF agreement. As Secretary Shultz noted in his testimony both on January 25 and March 14,

"The role of the Congress in this will remain essential * * * If the Soviets cheat on this Treaty, the President must be about to count on Congress to help him take the measures necessary to preserve our security and that of our Allies."

Mr. President, just as an added caveat on my part here, I think that is what I was referring to earlier. There has got to be some trust. I do not trust the Soviet Union and that is why I am demanding verification; that is why I am disappointed that we do not have more flexibility to the on-site inspection that we already have. That is why I have been working very diligently, certainly as the President in the Chair now recognizes, in the Strategic Subcommittee, to assist our Intelligence Committee in providing every possible advantage that we can or any new innovation to provide for the surveillance that we obviously need with regard to the INF Treaty.

A further caveat, I would say, is that I have grave concerns with regard to proceeding with the START Treaty at this time. I think there is no possibility of that taking place, nor should it, in my view. But I do think that the present President of the United States has laid the groundwork, laid the foundation for some understandings with the Soviets in the future with regard to some kind of a START agreement. But I, for one, am not in favor of proceeding in that area until we have more surveillance techniques than we currently have and certainly not until we have at least some indication from the Soviet Union that they are going to discuss with us their superiority in conventional warfare at least on the NATO front.

Now, back to the administration points. This is the next administration point.

But we do not want to establish hard and fast rules on the precise manner in which the President must respond to any compliance charge. We need to preserve flexibility in this regard and in the manner in which the Executive Branch can respond to both the Soviets and the Senate concerning compliance points.

Moreover, this Treaty is not based on trust, but on the most stringent verification provisions in history. While the INF Treaty does not guarantee Soviet compliance—no treaty can—it builds on lessons of the past and its provisions increase the cost of trying to cheat and the likelihood that violations will be detected through using a combination of enhanced national technical means, cooperative measures, and on-site inspections.

The next point by the administration:

In addition the Treaty contains clear incentives for Soviet compliance with the INF Treaty:

First, the Treaty provisions increase the probabilities of detecting cheating, since the existence of any Treaty-limited item after three years constitutes a clear violation. This means cheating entails a higher risk of detection in this Treaty than in previous ones under which we have detected Soviet violations.

Second, the U.S. has demonstrated through termination of its political commitment to adhere to the provisions of SALT II that the U.S. will not abide unilaterally by agreements whose security benefits are negated by Soviet violations.

And, of course, Mr. President, the caveat here on my part, I am sure what they are talking about there is that since the Reagan administration knew and recognized the fact that there were violations by the Soviets, they in turn went beyond the limits of SALT II.

There was some concern and gnashing of teeth about that at the time. But at least the Soviets, I do not believe for one moment, think we are asleep at the switch with regard to their violations or thoughts of violating. We will be watching them very, very carefully.

The Wallop amendment or anything like it is not going to either enhance our posture or position in that area.

The next point by the administration:

The Administration is pressing and should continue to press the Soviets to end their non-compliance with arms control agreements.

But this should not cause us to surrender the benefits of the INF Treaty or to lose the opportunity to put its landmark verification provisions into practice, in part to determine whether these provisions will prove more effective in bringing about strict Soviet compliance.

The PRESIDING OFFICER. The Senator from Nebraska has used another 10 minutes.

Mr. EXON. As I say, at the proper time if this amendment is not withdrawn we will move to table on this side and I reserve the balance of my time.

The PRESIDING OFFICER. Who yields time? If no one yields time, time will be charged against both sides.

The Senator from Indiana.

Mr. LUGAR. Mr. President, will the distinguished Senator from Nebraska yield 6 minutes?

Mr. EXON. I will be glad to yield 6 minutes to my friend from Indiana.

Mr. LUGAR. I thank the distinguished Senator. I thank the Chair.

Mr. President, I rise with reluctance because I appreciate the contributions made by each of the distinguished colleagues on this side of the aisle who have presented this amendment. It is an important consideration for all of us.

I suspect that each one of us will start by indicating how important compliance is; the anxieties we have with regard to compliance.

I shall not repeat the arguments made by the Senator from Nebraska but will underline at least two of them. First of all, it appears to this Senator that even though the language has been changed from "will" to "should," in each of the situations where those words are used—in paragraph 5 of the declaration that the treaty should no longer continue to

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remain in force with respect to the United States if the Senate adopts a resolution by majority vote that disapproves the certification submitted by the President pursuant to clause A or B of paragraph 4, as the case may be—that gives this Senator very grave concern.

Mr. President, the President of the United States, at least as I read this amendment, must make these certifications and must indicate the type of action that he and his administration are prepared to take when the violations are indicated. The Senate, by majority vote, could then suggest and I stress the word "should" now rather than will, and that is an improvement, but it could suggest that the United States leave the treaty at that very point.

Mr. President, clearly a very sizeable constitutional change is contemplated in that sort of a relationship.

The President of the United States is vested with authority to implement treaties, to take action with regard to foreign policy. As the distinguished Senator from Nebraska has pointed out, the Senate offers its advice and consent to the resolution of ratification by a two-thirds vote. But on a particular day—and I have seen a number, as have other Senators in which a particular event of foreign policy comes to our attention—as a member of the Senate Foreign Relations Committee, I can recall many times when Senators rush to the floor, demand the Senate take action to indicate our disapproval of a world leader or a disgraceful situation.

Frequently, the Foreign Relations Committee has been bypassed; the whole committee system is bypassed. The majority leader and Republican leader gathered together. Quickly they hover together everybody else and before the 6 o'clock newscast is on, the Senate has decisively, by a vote of 93 to 0, or perhaps one poor soul has a second thought about it—that is not a very good way to handle the constitutional relationship with the President, nor treaties, nor for even policy.

This is a serious business. We are in the process now of trying to add on additional things to a treaty which, at least to this point, I believe, looks like a pretty good treaty.

In our rush to conclude or in our desire to accommodate each other, we are almost likely to take the situation that comes with a domestic appropriation bill, perhaps, trading off this and that to accommodate each other, to try to grease the skids of this situation. That I think would be a bad mistake.

I appreciate that we are interested in compliance. But I would reiterate what the Senator from Nebraska has stated, and that is that the world now, in particular the Senate, is replete with reports from the President of the United States and the administration with regard to compliance.

They are coming out of our ears. The problem is that violations are not always a sure thing. We may think they are. We may be certain that the Soviets have cheated. I am simply here to tell you that most of the violations that are out there are still under consideration, under debate.

Most of us believe the presence of the radar facility is a violation. I believe it is a violation, and it is not really clear how the Soviets are going to deal with that with the great pressure put on them to do something.

I also say the President of the United States takes activity with regard to that radar installation. It is not up to us to have a majority vote as to whether we liked or thought it was sufficient or not and to take ourselves out of the ABM Treaty or, in this particular case, the INF Treaty if a violation were perceived and found wanting in terms of response by the Senate.

I hope, Mr. President, that we will not overstep the constitutional bounds in our anxiety about compliance and our desire to indicate toughness with regard to the Soviets. I just say on this side of the aisle, I applaud the distinguished Senator from Nebraska. I believe the President of the United States is a strong man. I am certain his successor is going to be a strong man. I happen to believe that Presidents ought to have executive authority. I sort of lost that argument a bit, in my judgment, earlier on in the day.

I expressed some misgivings with regard to the Byrd amendment, although I voted for it.

The PRESIDING OFFICER (Mr. ROCKEFELLER). The Chair must point out the time of the Senator has expired.

Mr. LUGAR. I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, this amendment I know is offered in a constructive spirit, in a positive spirit, by its proponents. But on balance, we have to judge whether it is an amendment that helps our Nation, in its development of foreign policy, helps our President, and helps ourselves.

What this amendment would basically mean is that while it takes two-thirds of the Senate to enter into a treaty, any time half of the Senate got impatient, it could withdraw from that same treaty.

It forces the President, in addition, to resolve the problem or propose a response in 90 days. That does not give the President very much time to solve a problem.

Basically, I think this is an amendment that would tie our President's hands in foreign policy to an extent that would be harmful to our basic interest.

I join with my colleague from Indiana in urging that we vote to defeat or perhaps even to table this amendment.

Mr. President, I still have the floor. I would like to yield 2 minutes to Senator LEVIN.

Mr. LEVIN. addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, this is really quite an extraordinary amendment because it represents a significant arrogation of power to the Senate and by the Senate. Under the Constitution, it takes two to make a treaty. Under this amendment, it takes but one to withdraw from a treaty.

If there has been a violation of the treaty, as certified by the President, no matter how minor he thinks it might be, and if the Senate is not satisfied with the way the President has tried to correct the violation, that is a significant change in the Constitution.

The Constitution does not provide the Senate and, indeed, may not permit the President—we do not know—to unilaterally withdraw from a treaty. It took two of us to enter into that treaty. It took our advice and consent. We had to consent to it before a treaty could be ratified.

Under this amendment, the Senate is given the unilateral right by majority vote to withdraw from a treaty if it disagrees with the Presidential certification in paragraph (4), clause (A) or (B).

Mr. McCLURE. Will the Senator yield for a question?

Mr. LEVIN. I will be happy to.

Mr. McCLURE. There have been two references that the Senate, by majority vote, could abrogate a treaty.

Is it not more correct to say that the President is required to give a report to the Congress which, by majority vote, the Congress could reject? Is there anything in the Constitution today that says that the Senate of the United States or the House of Representatives, the Congress as a whole, could not, by majority vote, say we do not like what is happening?

Mr. LEVIN. As far as I know, it is unclear in the Constitution as to whether the Senate—not the Congress—this says the Senate, whether the Senate unilaterally on its own can withdraw from a treaty.

The PRESIDING OFFICER. The Senator from Michigan has used his 2 minutes.

Mr. McCLURE. I wonder if the Senator will yield the Senator 2 more minutes so he can respond further?

Mr. PELL. I yield 2 minutes to the Senator from Michigan.

Mr. LEVIN. I know of nothing in the Constitution which gives the Senate the right on its own by majority vote to unilaterally withdraw from a treaty.

Mr. McCLURE. Will the Senate point to any language in this that gives the Senate by any vote, by any margin of vote, the right to withdraw from a treaty? It says on the face of

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the amendment that, by majority vote, the Senate could disapprove of the report that was filed by the President.

Mr. LEVIN. What is the effect of that?

Mr. McCLURE. It says the Senate disagrees with the report sent by the President.

Mr. LEVIN. And the effect of that be?

Mr. McCLURE. Is that the Senate does not approve of the report sent by the President.

Mr. LEVIN. It also says that "the declaration that the treaty should no longer continue to remain in force with respect to the United States if the Senate adopts a resolution," which the Senator just referred to.

Mr. McCLURE. No, it does not say that, I would say to the Senator. It says that the President can submit a report about whether or not we should or should not withdraw from the treaty, and the Senate has the right to approve or disapprove of that report by the President.

Mr. LEVIN. I am reading the language here at (5). Perhaps I am not reading the same amendment that has been offered. It says, "the declaration that the treaty should no longer continue to remain in force with respect to the United States if the Senate adopts the resolution."

Mr. McCLURE. Will the Senator not agree, however, that that is the language of a report required of the President?

It does not say that if the Senate votes to disapprove that report, that the treaty is automatically abrogated. This does not say that, does it?

Mr. LEVIN. It seems to say it to me, but I just read it. I cannot read it again any more clearly than I did the first time. If all the Senator is saying is that nothing happens if the Senate disagrees, then it seems to me this is an utterly useless amendment.

Mr. McCLURE. The Senator might have that—

Mr. LEVIN. The Senate has a right to adopt a resolution at any time disagreeing.

Mr. McCLURE. That is exactly the point I was trying to make and nobody has yet argued that that is unconstitutional.

Mr. LEVIN. The Senate has a right to express an opinion every time, but here we are saying that the treaty should no longer continue to remain in force.

The PRESIDING OFFICER. The time of the Senator from Michigan has once again expired.

The Senator from Wyoming.

Mr. WALLOP. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Wyoming has 7 minutes and 18 seconds.

Mr. WALLOP. And?

The PRESIDING OFFICER. The other side has 5 minutes and 36 seconds.

Mr. WALLOP. Mr. President, I yield myself 6 minutes.

Mr. President, let me say that this whole debate has been Alice in Wonderland, but this in particular gets us there. The treaty itself permits the President to withdraw from the treaty. Let's not make any foolish statements about that. The senior Senator from Nebraska has made statements which tell me that he nor the administration have read the amendment. What they want to do is not have any amendment. First of all, the Senator from Nebraska says this is an amendment to the treaty, and nothing could be further from the truth. The treaty has been set aside. He may not realize that but it is true.

Second of all, he read something from the administration and Secretary of Defense Carlucci that said we ought to do this on a case-by-case basis. What in Heaven's name does he think this treaty provides except the response on a case-by-case basis. I do not know where his head is but it is not in the amendment.

Third, these reports are redundant and he said we should not trouble the administration to prepare the one report and submit it on both cases. The Senator from Nebraska was unwilling to yield to me just for the observation that this is not an amendment to the treaty, does not go on the treaty, cannot go on the treaty. That is all gone, and it will not come back. We have made a provision for the administration to handle the reporting requirements through an existing report.

One of the things that this amendment does is put the Senate on notice that it pays the bill, a rare occasion for us. If we do not pay the bill, nothing takes place.

He said maybe in a few weeks we could find something that we could all get behind. I can tell you what we can all get behind. That is a piece of mush. The Senate has had an opportunity throughout the experience of this Senator to do something about Soviet violations and all it does is constrain the behavior and actions of the United States, not seek in any way to constrain the behavior and actions of the Soviet Union.

The administration and the Senator from Nebraska and the Senator from Indiana all say they do not want to set a standard for compliance. There is no standard for compliance in here, to the great regret of the Senator from Wyoming. I wish there was, I wish that we had something that said to the Soviet Union we are serious about your undertakings as well as our own. What this Senate and this debate says to me is that the only undertakings we are serious about in this treaty are those of the United States. We ratify in addition to this treaty your past behavior and your future behavior. We license it.

The Senator from Indiana says that violations are not a sure thing. If the

violations are not a sure thing, no action is required. What we have here is the administration mewling and whining about a fact that this Senate would like to have us say we are serious about the compliance regimes under this treaty.

There is no more useless word in arms control than verification absent an intent to take some action once you verify a violation. That is the whole point of this. Modest as it is, it says the American people would like to be sure that the Soviet Union lives up to it. The American people would like to be sure that the Senate is serious that if the Soviet Union does not, as it has not in the past, live up to its obligations under this treaty, there is some contemplated review and action possible to us there. Nothing, unfortunately, is mandated. It just says take compliance seriously.

The Senator from Nebraska says that cheating contains in this treaty a higher risk of detection. So what? If after detection we have no action in mind, what in Heaven's name is the use of detection? That is really what this is all about. He said we should press and continue to press for compliance. What a wonderful thing. Yes, let us press. With what? Our little finger or something even less strong? He said we should not lose our stringent verification. Why would this amendment damage in any way the INF Treaty's verification regime? On what basis could anybody say that is would? There is no recorded or required action on behalf of the Soviet Union other than to listen to this thing being read to them. That is it. So how are we going to lose our stringent verification? And what in Heaven's name is the use of our stringent verification if we do not have the simplest idea that we would like to require compliance should we through verification determine them to be in violation of the treaty?

Mr. President, I reserve the remainder of my time.

Mr. LUGAR addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, will the distinguished chairman of the Foreign Relations Committee yield 3 minutes?

Mr. PELL. I yield 3 minutes to the Senator from Indiana.

Mr. LUGAR. I thank the Senator.

Mr. President, the distinguished Senator from Wyoming has mentioned at least some judgmental views that somehow or other the Senate would say through this amendment that we are serious about violations, about compliance. The American people would like to be sure that the Soviets live up to the treaty and that some contemplated review is going to occur, that we are not licensing the Soviet Union to violate.

Mr. President, I do not detect in President Reagan any intention in his actions to show any degree of license,

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as he approaches the Soviet Union, to violate treaties, violate relations with our country. I have not detected in President Reagan that the American people feel he is soft on communism, soft on violations, soft on arms control. Quite to the contrary, Mr. President. One reason, in a very practical sense, we have before us tonight the INF Treaty and have a very good chance of seeing its passage is because a very conservative Republican President decided to negotiate from strength. That is a very important factor. The impression given, I fear, by this amendment is that somehow or other our President is beguiled or asleep or simply does not understand the whole violation process.

Now, I would submit he does. The administration has been furnishing reports of violations. The administration has been working through the consultative commission to try to work out violations. We have spotted them. We ought to say to the American people in this debate we are serious about it, we have been serious about it, one by one we are following through on them, and to give any other impression, it seems to me, would be a gross violation of the facts.

Now, we might be able to do more, and to the extent that this debate spurs the administration on to greater compliance, that is to the good. But it is not the time and place to add an amendment to the INF Treaty or to the resolution of ratification, more particularly, that is unnecessary, and for reasons that I suggested earlier on I think is a constitutional breach of some significance.

I thank the Chair.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Will the distinguished chairman of the committee yield me 2 minutes?

Mr. PELL. Mr. President, I yield 2 minutes to the Senator from Nebraska.

Mr. EXON. Mr. President, I suspect that time has about run out. We are ready to vote on this. I had hoped that my friend and colleague from Wyoming would withdraw the amendment. I take it he does not intend to do that by the remarks that he just made.

I would simply say that the Senator from Nebraska made the case as he saw it. He made the case for the administration. I suspect that I will be the first Democrat that will be called down to the White House, ushered into the Oval Office and have my picture taken with the President of the United States for the great service that I have rendered to his administration and the Republic for standing up for what I believe in here. I say that facetiously. I know that is not going to happen.

Some of the remarks that my friend from Wyoming made with regard to what the Senator from Nebraska thought were not my thoughts. I

thought I clearly indicated those thoughts that he, many of the thoughts that he took objection to, were point papers that were furnished to us by the administration, which I tend to support whenever we leave the shores of the United States and enter the very complicated world of international politics. I think it would not help the President of the United States—if we can ever get this treaty ratified and handed to Mr. Howard Baker so he can rush over there with it, because of our negligence and time-consuming actions, some of which are not unlike this particular amendment. I do not think it would help the President of the United States to have to fumble around with this kind of language that is as ridiculous and redundant as this amendment is.

Last but not least, if we would ever pass an amendment like this, then we would indeed have a historical moment. We would be putting the United States on record as allowing half of the Members of this body, as the Senator from Indiana has said so well, in any given moment and at a moment's notice, to vote to withdraw from the treaty with a simple majority vote.

I am as much concerned as anybody else about Soviet violations. But this amendment does not begin to cure anything. I yield back the balance of my time.

The PRESIDING OFFICER. The Senator's time has expired. All time on the majority side has expired.

Mr. WALLOP. Mr. President, I ask unanimous consent that a poll be inserted in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Q. 10. And, do you think the U.S. Senate should or should not require:

c1. That President Reagan certify that the Soviet Union is adhering to all past arms control agreements before the treaty can take effect:

ATS March 1988—Should require, 71%; Should not require, 24; Not sure (volunteered), 5.

c2. And, would you still favor requiring this condition if it meant the risk of killing the INF treaty?

Among those favoring condition in Q.10c1:

ATS March 1988—Should require, 76%; Should not require, 20; Not sure (volunteered), 4.

Net total from Q.10c1 and Q.10c2.

Even If Condition Would Kill INF Treaty:

ATS March 1988—Should require, 54%; Should not require, 39; Not sure (volunteered), 7.

Mr. WALLOP. Mr. President, I do not know what goes on in here. I do not know why the opposing side chooses to misrepresent what is taking place in here. There is no majority vote in the Senate that eliminates the blinding effect of this treaty, and they say it is simply to cloud the issue. It is in fact not true. Let me just assure the Senate of that case as the Senator from Idaho has just done.

Second, this is not an accusation that the President is soft on commu-

nism or weak or anything else. It is a historical reaction of the Senate of the United States, should we be brave enough to pass it, that we have viewed past Soviet behavior—and there is record of noncompliance—and we want for darned sure this time to be certain that they comply.

That is not a very bad thing.

I yield the remainder of my time to the Senator from Nebraska, Senator KARNES.

Mr. KARNES. Mr. President, I appreciate that, and the words of my distinguished colleague from Wyoming.

I would just like to make a couple of very brief observations. I heard the old saying, "Where's the beef?" I think in this case this amendment deals with, "Where's the teeth?" There have been a number of statements made about the teeth of these treaties that have been signed by various countries with the United States on arms control. There have been no teeth.

There was a statement made by my distinguished colleague from Nebraska, I believe a side from the administration, that says this treaty builds on the lessons of the past. If there is one lesson of the past that this amendment builds on, it is the fact of what we have done in the face of violations by the Soviets of the ABM Treaty, the Chemical, Biological, and Toxic Weapons Convention, the Nuclear Limited Test Ban Treaty, and the Helsinki Final Act, to name a few. That is what I am asking. Where is the teeth? I believe this amendment provides those teeth.

Mr. WALLOP. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I move that when the appropriate time comes, perhaps Senator LUGAR and myself should move to table the Wallop amendment. I make that motion now. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Under the previous order the Senator from California is recognized for the purpose of making an amendment.

AMENDMENT NO. 2325

(Purpose: To provide that the only interpretations of the Treaty which bind the United States are those which are equally binding on the Soviet Union under applicable international law)

Mr. WILSON. Mr. President, there is an amendment at the desk which I offer on behalf of myself, Senators NICKLES, QUAYLE, DOLE, LUGAR, WARNER, and MCCAIN.

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The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California (Mr. WILSON), for himself, Mr. NICKLES, Mr. QUAYLE, Mr. DOLE, Mr. LUGAR, Mr. WARNER, and Mr. McCAIN, proposes an amendment numbered 2325.

At the end of the resolution of ratification, add the following:

The Senate's advice and consent to ratification of the Treaty is further subject to the following:

() CONDITION.—The United States shall not be bound to any interpretation of this Treaty that is not equally binding on the Soviet Union under applicable international law.

Mr. WILSON. Mr. President, I did not ask for a suspension of the reading. It took him a very brief time to read the entire amendment. It is a single sentence. It states:

The United States shall not be bound to or constrained by any interpretation of this treaty that is not equally binding or constraining upon the Soviet Union.

Mr. President, a great Senator, a great Democrat, "Scoop" Jackson, at the time of the SALT I agreement, offered an amendment that said essentially the same thing. His concern at that point had to do with mutuality of obligation in terms of quantity, in terms of the number of units that we were concerned with, but the principle was the same.

Mr. President, I can think of no reason, frankly, why this amendment is not acceptable, and would be happy to have it accepted. It simply says that the United States and the Soviet Union shall operate under mutuality of obligation with respect to an interpretation of this treaty.

Mr. President, at this point, I reserve the balance of my time.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

If the Senator will suspend for a moment, who yields time?

Mr. WILSON. I yield to the Senator from Oklahoma such time as he may require.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I rise in support of this amendment and as a cosponsor of it. I appreciate and compliment my good friend and colleague, Senator Wilson from California.

This amendment is simple, but probably as important as any amendment which we have discussed over the last couple of weeks. It says and states very frankly and very briefly that the United States should not be constrained by any interpretations of the treaty that are not equally binding upon the Soviet Union.

We should not be more binding on the United States than we are on the Soviet Union. Very often, despite the fact that the United States adheres to treaties very strictly and closely, the Soviet Union has taken advantage of us and "driven a truck" through a very broad or gray area of various treaties.

This amendment says we will not be held bound by any interpretation in any way that the Soviet Union is not also equally bound. It is a very commonsense amendment, a very important amendment, one that I would hope would be passed by an overwhelming majority of the Senate tonight.

The PRESIDING OFFICER. Who yields time? Who yields time?

Mr. NUNN. Mr. President, may I ask who controls the time in opposition?

Mr. PELL. I believe I control that time. I will yield as much time as the Senator may desire.

Mr. NUNN. I thank the Senator.

Mr. President, this looks like an amendment that everyone should immediately go down and say, "I am in favor of this." But I think it is important for the Senate to understand what it does. This basically sets up international law, applicable international law, and says by implication that international law will override domestic law. That has the effect of severely undermining, if not completely diluting the Byrd amendment, which was passed by 72 votes a few minutes ago, maybe a few hours ago.

It also is contrary to the Culvahouse letter that was sent to Senator LUGAR. The Culvahouse letter states clearly, and I quote from that letter:

The President is bound by authoritative interpretations * * * and relied upon by the Senate.

Quoting from the letter:

* * * even if the treaty negotiating record and subsequent practice indicate an interpretation to the contrary.

This is also contrary to the Cooper memo which was a Justice Department memo which came out about a year ago which states, and I quote from that Cooper memo:

Obviously a President could not negotiate a treaty with other nations on the basis of one understanding of its import, submit the treaty to the Senate on the basis of a wholly different understanding, and then in implementing the treaty rely solely on the understanding he had reached with other parties.

Such results would essentially eviscerate the Senator's constitutional advice and consent role, because it would deprive the Senate of a fair opportunity to determine whether or on what conditions the treaty should become the supreme law of the land.

So I say about the Wilson amendment, for those who voted for the Byrd amendment, I urge them to vote against this amendment.

We do not believe that the Senate of the United States and the authoritative representations given to the Senate of the United States should be rolled back by international law. What this basically says is that if you have a negotiating history or a negotiating record that is contradicted by the administration's own authoritative testimony, the international law principle would set up a negotiating history. That may not be what the author means, but that is the clear import of this amendment.

It basically would mean that the ratification process we go through in the Senate, no matter what we are told, is forbidden by international law or could be interpreted that way, and we could go back to the negotiating history.

So an administration could come up here and say: "We have agreed to treaty A. We want you to give consent to ratification of treaty A." We could give consent to ratification of treaty A. They could sign that—let us say the INF Treaty. They could sign the INF Treaty and then testify before the Senate what it meant. Then they could go to Moscow, with the Senate's consent, and could exchange the articles of ratification, and we could have a treaty. They could come up a year later and say: "Wait a minute, fellows. Locked in the State Department's safe, we forgot to give you part of the negotiating history. Under the rules of international law, we now have a treaty we explained to you as treaty A, but it is really treaty B, because we didn't give you that, or at least you didn't catch it. So what we have here is that the Soviet Union is not bound, because of negotiating history, by treaty A, and they are bound by treaty B. We are sorry, and we are now bound by treaty B. We will help you next time, Senate, but right now we're going to go with another treaty, even though we testified that this was the treaty we agreed to."

So anyone who believes that the Senate of the United States has a role in this matter should vote against this amendment.

Mr. NICKLES. Mr. President, will the Senator yield?

Mr. NUNN. I yield for a question.

Mr. NICKLES. That is the purpose. I do not know how much time the Senator has.

Mr. NUNN. I do not know about the time.

Mr. PELL. Mr. President, I yield such time as may be necessary to the Senator from Georgia.

Mr. NUNN. I thank the Senator.

I yield for a question.

Mr. NICKLES. To my friend and colleague from Georgia, I say that I am surprised by his statement and by his opposition to this amendment.

Is he telling us that by adoption of the Byrd amendment, we are saying, automatically, that the United States is going to be agreeing to more strict interpretation, more constraints, than the Soviet Union is going to be agreeing to?

This amendment is just trying to make sure that will not happen. I read the Byrd amendment; I have read it several times. With this amendment we are trying to make sure that we do not put more restraint on the United States than we do on the Soviet Union. That would not be to the advantage of the United States.

Mr. NUNN. The way to do that is that the administration tells the truth

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and gives authoritative testimony and has competent people negotiating. Then you make sure the authoritative testimony is also binding on the Soviet Union. That is what we have tried to do. Unfortunately, we have had unpleasant experiences in recent years with things like that, not being the case.

Mr. NICKLES. I doubt if the Soviet Union has to testify before three committees, hundreds of hours, thousands of pages, and submit their leaders to the type of detail we do.

I am glad we do look at treaties to the extent we do, but I am afraid part of the result is that we are going to develop a treaty that will be much more restraining on the United States than on the Soviet Union.

It is a very simple amendment. Basically, it states that we do not want to have an interpretation that is more binding on the United States than on the Soviet Union. It is very clear. I hope the Senator from Georgia, knowing him as I do, would support this amendment, to make sure that we do not place more restraint on the United States than the Soviet Union.

Mr. NUNN. I am in complete accord with the Senator to make sure that we are not bound by anything the Soviet Union is not bound by. That is the reasons why we are careful in our committees to make sure that the administration gets a good, sound treaty, that we have sound cross-examination about what the treaty means, and that if there is any doubt about whether the Soviet Union is equally bound, we go through the procedure we go through here today, of attaching amendments to the articles of ratification.

I agree with the goal this amendment is aimed at, but this amendment is clearly an effort to basically unwind the Byrd amendment. That is what it is.

Mr. NICKLES. If this is to unwind the Byrd amendment, was the purpose of the Byrd amendment to impose more restraint on the United States than it does on the Soviet Union?

Mr. NUNN. No. That was not the purpose, and that would not be the case, except in rare circumstances, where you had administrations which were incompetent or devious or some combination of that.

There is a possibility that you could have an administration come up and say: "This is what we believe the treaty is. It is treaty A."

Then they could come back in 6 months and say, after we have already consented to ratification: "We're sorry, it wasn't treaty A. We found something in our safe that says this point was incorrectly explained; and even though the testimony was authoritative, that was not in the negotiating history, and therefore, Senate, we're sorry, but you consented to treaty B, even though we told you it was treaty A." That is how this whole proposition got started.

We are not going to relegate the Senate of the United States and the law of the United States to some principle of international law that refers to a negotiating history that we do not even have before us when we are going to examine a treaty. I do not think that is what the Senate wants. I do not think that is what the Senate will get.

I assure the Senator that the people on his side of the aisle who may be in favor of this amendment may change their minds if there is a different President of the United States, because I do not think you would want the President of the United States in the next go-round, if it happens to be someone you do not particularly agree with, to be able to come in and say: "Look, folks, we sure are sorry about the Reagan administration. But that INF Treaty they explained to you was not right. They just made some bad mistakes on that, and they had some ambiguities in there. We found some memoranda in the Joint Chiefs' office that said no, that was not right. They explained the right treaty to you, and therefore we're sorry, but you agreed to something else—and we abolished air-launched cruise missiles, too. We abolished sea-launched cruise missiles. But we forgot to tell you."

Is that what the Senator wants?

Mr. NICKLES. This Senator wants to make sure, by the language we have in this amendment, that nothing is more binding on the United States than it is on the Soviet Union.

If the Soviet Union is not bound we do not want to be bound. That is all this amendment does.

I want to make sure that the Senator is well aware of what the amendment says.

Mr. NUNN. Mr. President, I ask the Senator from Rhode Island how much time does he have remaining?

The PRESIDING OFFICER. Five minutes.

Mr. NICKLES. How much time does this side have?

The PRESIDING OFFICER. Twelve minutes to Senator Wilson.

Mr. NUNN. Mr. President, I close with this comment: perhaps the Senator would rather have both sides equally bound and know what is in the treaty. We could say right here that, yes, the Reagan administration made a mistake on INF. They thought they were abolishing ground-launched cruise missiles. Oh, but they made a mistake. In the negotiating history they abolished air-launched cruise missiles and they abolished sea-launched cruise missiles. But do not worry, the Senator from California, the Senator from Indiana, do not worry about that because the Soviet Union is equally bound. We have all theirs, too. And then this wonderful principle here we say we are in great shape. We are equally bound but, oh, we just gave away our air-launched cruise missile and our sea-launched cruise missile because the Senate of

the United States was given the wrong information.

So you have two principles here. Both of them are important. But I think the principle we first ought to adhere to is one which assures we know what a treaty is and what it means before we consent to the ratification.

So anyone voting for this is basically saying as long as the Soviet Union is equally bound, the administration can tell us anything they want to, anything they want to, and we will go along with it because later on they could change their mind.

Of those two principles which are desirable, I prefer to take a chance every now and then that we are going to have one danger rather than the danger this creates, which is to basically say, "Agree to anything you want to, administration, lie to us, if you want to, be devious, be tricky, just make sure the Soviets are equally bound." We may give away the Stealth next, but as long as they give away their Stealth, OK; if that is what the Senators want, fine, but I will vote against this amendment.

Mr. WILSON. Mr. President, how much time remains to the proponents?

The PRESIDING OFFICER. Twelve minutes, five seconds.

Mr. WILSON. How much remains to the opponents?

The PRESIDING OFFICER. Two minutes and fifty seconds.

Mr. WILSON. Mr. President, as great as is my respect for my friend from Georgia, frankly that is not one of his better efforts. I would just have to say that he has constructed more straw men than I thought could probably be crowded into a single hayloft. He has come up with every impossible, fatuous example. I cannot conceive of any Senate capable of doing what he has just suggested.

But let me just state this: he is flat wrong in his statement of the law. It is quite possible that with the adoption of this amendment the Senate of the United States could legally adopt a different domestic obligation and we would be binding ourselves to a different standard domestically than we would under international law.

If we chose to do that for reasons the Senate thinks good so be it. I cannot conceive of many instances in which I think it would make sense to have a different domestic obligation than that proposed by international law which is to say imposed by the mutual treaty obligations of this treaty, and I think the Senator from Oklahoma is absolutely right.

If this undoes the Byrd amendment, then it was much worse than I thought it was. Indeed, I do not think that it is quite that bad.

But what this simply says is that in any treaty obligation assumed by the United States under the INF Treaty, we will expect the Soviets to abide by at least as constraining an interpreta-

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tion, and we will not be constrained more than they. We will have mutuality of obligation because we will have a mutuality of interpretation.

Scoop Jackson would have understood that if the Senator from Georgia does not, I am frankly shocked.

Mr. President, I yield to the Senator from Indiana 2 minutes.

Mr. QUAYLE. Mr. President, this is such a straightforward amendment. The principle is that the United States and the Soviet Union ought to be bound by the same interpretation of the treaty. End of amendment. End of principle. And what I guess the opponents of this amendment are in effect saying is that, no, the United States and the Soviet Union do not have to be bound by the same interpretation. I think that is—

Mr. NUNN. Mr. President, will the Senator yield?

Mr. QUAYLE. I do not have but 2 minutes. I do not have time.

I think that is a very unfortunate position for this Senate to get itself into, because certainly, we have had voluminous debate on interpretation and everything. When it comes down to it, it is whether we are going to be bound by the same interpretation of a treaty, and that has been the whole debate. All of a sudden we get off on the ABM interpretation and who is telling the truth to whom and all of this. I do not know if we are talking about the United States lying or the Soviet Union lying.

But I can tell you this, that the basic principle is that we are talking about interpretation of a treaty and if we do not have both sides bound by an interpretation of the treaty, that treaty is not very good.

And if that is not a fundamental principle that the U.S. Senate can go on record to support, I really do not know where we are as far as giving our advice and consent for ratification.

This is a very simple, straightforward amendment. What we are bound to as far as interpretation, the Soviets are bound to.

That is all this amendment does. It is logical. It is straightforward. This is not any kind of frontal or behind attack on the so-called Byrd amendment. This does not have anything to do and should not have anything to do with the interpretation argument.

This is just a simple thing. We have a treaty out there and the interpretation of that treaty ought to be adhered to by both sides, and we ought to have an understanding of what that interpretation is. The United States should understand what that interpretation is and the Soviet Union ought to understand that. If we do not, we have a long way to go as far as treaties are concerned.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Will the Senator from Rhode Island yield me about 2 more minutes?

The PRESIDING OFFICER. Who yields time?

Mr. PELL. I yield 2 minutes to the Senator.

Mr. NUNN. Mr. President, I will take about a minute and a half.

I ask the Senator from Indiana this question, and he can answer it on his own time. We spent a lot of time in the committee on article XIV of the noncircumvention clause. We were not trying to establish there an obligation as much as we were trying to reserve U.S. rights to cooperate with our allies.

We think we know what that means. But if the U.S. governmental representatives testify before our committee and they are wrong, and we have not established those rights because of the negotiating history, the next President will come in and say "Wait a minute, we discover that noncircumvention was not as explained before the Senate. Rather we agreed not to really exchange with our allies. We have a rather strict noncircumvention. We cannot cooperate with them on sea launched missiles because the Reagan administration's negotiating history shows otherwise, not what they told you before in the Senate, no matter what questions you asked."

They say, "Wait a minute, now the Wilson amendment if it passes says as long as the Soviet Union is bound that is OK. All right. We are both bound. The Soviet Union is bound and we are."

But the authoritative testimony was dead wrong and you would be letting our own administration in the future reinterpret the treaty. I do not believe that is what you want to do. But I think that is what you are doing by implication.

Mr. President, I yield the floor.

Mr. WILSON. Mr. President, I yield to the Senator from Indiana 1 minute.

Mr. QUAYLE. Let me just respond to that.

As far as the article XIV, we spent a lot of time on that. We have what we believe is an interpretation of that article and, by golly, that interpretation of that article better be understood and accepted by the Soviet Union, and I assume that it is. And if in fact that interpretation of article XIV, which we found out is not a noncircumvention issue and allows us to transfer certain components to our allies, if the Soviet Union does not have that same interpretation of article XIV, we have problems. And that is what this amendment does. It makes certain that our interpretation and the interpretation of the treaty itself, whether it is article XIV or anything else, that the interpretation is also agreed to by the Soviet Union or you do not have a treaty. You simply do not have a treaty that is worth the paper it is written upon if you do not have a basic commonsense amendment like this that both sides are bound by a common interpretation.

The PRESIDING OFFICER. Who yields time?

Mr. NICKLES. Mr. President, will the Senator yield me a couple minutes?

Mr. WILSON. Mr. President, I yield to the Senator from Oklahoma 2 minutes.

Mr. NICKLES. Mr. President, part of the problem as I see it, is that our negotiators—and I have had the privilege of visiting with our negotiators and serving on the Arms Control Observer Group with Senator PELL and Senator LUGAR and others—negotiate with the Soviet Union but they also many times find themselves negotiating with Members of Congress, through various means, because Congress attempts to convey what we want our negotiators to do, maybe through funding, or maybe through amendments on DOD bills.

But not only do they have to negotiate through the appropriations process and also through the hearings in various committees, but they also, to some extent, end up negotiating when they are clarifying the record.

We now have a situation where the chairman of the Armed Services Committee is saying: "Well, yes, we are going to be totally bound by whatever authoritative comments were made before the committees, even if that is more restrictive than what is placed on the Soviet Union."

I find that to be going too far. I am bothered by the fact that we would impose on our country more stringent requirements than we impose on the Soviet Union. I have an idea that, when the Soviet Union was having hearings on this treaty, they did not go to this extent. I doubt that their hearings were quite this extensive. I doubt that they were this thorough. I doubt that it makes that much difference in the Soviet Union, because probably a few generals and members of the Politburo decide and make any decisions concerning any treaty, period.

I would hate to see us fail to adopt this amendment. It would be a serious mistake to say that, yes, we are going to be more restrictive on the United States than we are on the Soviet Union.

Mr. President, this is not a killer amendment. This is a positive amendment. This amendment is supported by the administration. I think that it should be adopted by a strong vote in the Senate.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. Who yields time?

The majority leader.

Mr. BYRD. Mr. President, I have been listening to the voices of Mr. NICKLES, Mr. QUAYLE, and Mr. WILSON, not one of whom voted for the reinterpretation amendment, which protects the role of this Senate under the Constitution in the making of treaties.

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Mr. President, I want to see the President get this treaty because, as far as the treaty now stands, it can go on to the President while he is at the summit. But I think that what we had better do, Mr. President, is not to let this amendment be adopted. We had better get off somewhere and have a little talk and come to our senses, because this resolution of ratification is not going to be voted on tonight and it is not going to be voted on tomorrow and it is not going to be voted on on Saturday if this amendment is on it.

This Senator thinks more of this Senate than he does of this administration or any other administration, this treaty, or any other treaty. I hope we will sober up.

The PRESIDING OFFICER. The Chair points out that all time has expired for the opponents of the measure.

Mr. BYRD. Mr. President, has all time expired?

The PRESIDING OFFICER. The proponents have 3 minutes and 39 seconds. The opponents have no time remaining.

Mr. WILSON. Mr. President, how much time do the proponents have remaining?

The PRESIDING OFFICER. Three and a half minutes.

Mr. WILSON. The opponents have no time?

The PRESIDING OFFICER. That is correct.

Mr. WILSON. Mr. President, I will respond to the observation made by my friend, the majority leader. I will tell you who did vote for your amendment and who is a cosponsor of this legislation: Senators WARNER, DOLE, LUGAR, and D'AMATO. Clearly they do not find anything so terribly conflicting between supporting the Byrd amendment and supporting the Wilson-Nickles-Quayle amendment.

Mr. BYRD. Will the Senator yield?

Mr. WILSON. I yield for about 1 minute, because I do not have much more time.

Mr. BYRD. That is why I am saying we should get off and have a little talk before we vote on this amendment. There are some Senators, I am sure, who cosponsored the amendment, who probably did not realize the gravity of this amendment when they cosponsored it. I am hoping that we can convince them to not support this amendment.

I thank the Senator for yielding.

Mr. WILSON. Mr. President, with all due respect to my friend the majority leader—and I was pleased to yield to him—I think that Senator WARNER and Senator DOLE and Senator LUGAR and Senator D'AMATO understood full well. We discussed the meaning of this amendment. Its meaning is clear. It simply requires that there be a mutuality of obligation with respect to the interpretation of the treaty. In fact, I think it does disservice to the Byrd amendment to say that the Byrd amendment required, as apparently

the Senator from Georgia thinks, that we be at a disadvantage. I certainly did not have that idea.

What I do say is that we must not be at a disadvantage. There must be mutuality with respect to interpretation. And, I repeat, Scoop Jackson would have understood that. He understood it during the time of the SALT I when he proposed, essentially, the same safeguards for the United States as we are proposing tonight with this very simple amendment.

Mr. President, how much time do we have remaining?

The PRESIDING OFFICER [Mr. LEVIN]. The Senator has 1 minute and 15 seconds remaining.

Mr. WILSON. Mr. President, I yield the remainder of my time to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank my colleague from California.

Mr. President, as the debate moves on, when we consider the ramifications of the Biden condition, as amended by the Byrd condition, we see really how far afield we have come. The distinguished Senator from California is proposing mutuality, which is the cornerstone of all treaty obligations.

This Senator has two amendments to offer to follow up to clarify the Biden condition, as amended by the Byrd condition. But if we do not pass this amendment, then we have destroyed the total foundation of international treaty interpretation, which is bottomed solely on mutuality of obligations. If that is not present, good-bye to treaties.

Mr. WILSON. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BYRD. Does this amendment qualify under the cloture rule, if cloture is invoked?

The PRESIDING OFFICER. The amendment is a first-degree amendment and was not filed by the deadline.

Mr. BYRD. Very well.

Mr. WILSON. Mr. President, could you repeat the ruling? I could not hear the Chair.

The PRESIDING OFFICER. The amendment is a first-degree amendment and was not filed by the appropriate deadline.

Mr. BYRD. Mr. President, I hope the Senators will reflect on the response of the Chair to that question and vote to table the amendment now so that we can get on with the business of the Senate. Otherwise, we will have a cloture vote.

Mr. President, I move to table the amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. LUGAR. Mr. President, I request on our side a short quorum call, if that is permissible, so that Members might be notified.

Mr. BYRD. That is a good idea.

Mr. President, I ask unanimous consent that, upon the disposition of this tabling motion, the majority leader be recognized because, otherwise, upon the disposition of this tabling motion, cloture, under the previous order, will be voted on. So I ask that the majority leader be recognized at that time.

The PRESIDING OFFICER. Is there objection?

Mr. WILSON. Reserving the right to object, Mr. President.

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Mr. President, let me just inquire: What would the effect be if the majority leader proceeded to invoke cloture on those remaining amendments?

Mr. BYRD. Only those amendments that had been timely filed under rule XXII would qualify under cloture. The Senator from California's amendments would not qualify.

The PRESIDING OFFICER. Is there objection?

Mr. WILSON. Mr. President, reserving the right to object.

Mr. President, I will object.

The PRESIDING OFFICER. Objection is heard.

Mr. BYRD. Mr. President, I ask unanimous consent to proceed for 1 minute.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BYRD. What this means is that when the vote on a tabling motion is completed, the Senate will immediately have the mandatory quorum under cloture and then there will be the cloture vote.

The PRESIDING OFFICER. The question is on the motion to table.

Mr. BYRD. Mr. President, I ask to proceed for 30 seconds. I am trying to save this treaty. I am trying to save this treaty because, as of now I think it is a good treaty and I would like to see the President have it before he leaves the summit. This is no empty threat. I think if we can get off the floor for just a few minutes we can resolve this, but as it now stands, if I do not get consent that I be recognized upon the disposition of this vote, the Senate will go to the cloture vote. And this amendment will not qualify under cloture.

Mr. WILSON. Did I understand the majority leader to ask for unanimous consent to postpone cloture?

Mr. BYRD. No. I might do that, depending on how this vote comes out.

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That is why I wanted to get recognition at the conclusion of this vote.

Mr. President, I ask unanimous consent that the majority leader be recognized for not to exceed 1 minute upon the conclusion of the rollcall vote which will occur on the tabling motion.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

The question is on the motion to table Amendment No. 2325. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Mississippi [Mr. STENNIS] is necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 53, nays 45, as follows:

[Rollcall Vote No. 160 Ex.]

YEAS—53

Adams	Fowler	Mitchell
Baucus	Glenn	Moynihan
Bentsen	Gore	Nunn
Bingaman	Graham	Pell
Boren	Harkin	Proxmire
Bradley	Hatfield	Pryor
Breaux	Heflin	Reid
Bumpers	Inouye	Riegle
Burdick	Johnston	Rockefeller
Byrd	Kennedy	Sanford
Chiles	Kerry	Sarbanes
Conrad	Lautenberg	Sasser
Cranston	Leahy	Shelby
Daschle	Levin	Simon
Dixon	Matsunaga	Stafford
Dodd	Melcher	Weicker
Eaton	Metzenbaum	Wirth
Ford	Mikulski	

NAYS—45

Armstrong	Grassley	Nickles
Bond	Hatch	Packwood
Boschwitz	Hecht	Pressler
Chafee	Helms	Quayle
Cochran	Helms	Roth
Cohen	Hollings	Rudman
D'Amato	Humphrey	Simpson
Danforth	Karnes	Specter
DeConcini	Kassebaum	Stevens
Dole	Kasten	Symms
Domenici	Lugar	Tammond
Durenberger	McCain	Trible
Evans	McClure	Wallop
Garn	McConnell	Warner
Gramm	Murkowski	Wilson

NOT VOTING—2

Biden Stennis

So the motion to table the amendment (No. 2325) was agreed to.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I ask unanimous consent to speak for 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

Mr. BYRD. Mr. President, may we have order in the Cloakroom?

[Laughter.]

The PRESIDING OFFICER. The Senate will be in order.

Mr. BYRD. Senators will have plenty of time to watch the game a little later.

The PRESIDING OFFICER. Will all Senators please take their seats? The majority leader is recognized.

Mr. BYRD. Mr. President, I ask unanimous consent that the vote on cloture be suspended until I yield the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent to speak for 5 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. BYRD. Mr. President, I thank all Senators for their patience and attention.

This is a very beautifully worded amendment on its face. It almost had me voting for it. But this amendment will not uphold the role of this Senate under the Constitution and the making of treaties.

Mr. President, I warned Senators before this vote that if this amendment were not tabled, the President would not have the treaty before he leaves the summit. That is no empty threat. But Senators did not listen. I think we had three votes from the other side, three or four. The rest voted a party line vote, against their own President's having that treaty approved before he leaves the summit.

I have had a good bit to do with helping to save this treaty and helping the President to have it approved. I resisted the pressure to bring up this treaty until the faults could be corrected. The administration's negotiators went back to Geneva and corrected those faults. It is now a better treaty than it ever was before. If this is the kind of cooperation we are going to get, if we are going to continue to have to deal with Mickey Mouse amendments like this one that was tabled, the President is not going to have his treaty before he leaves the summit. And that is no empty threat.

Mr. WILSON addressed the Chair.

Mr. BYRD. Mr. President, I do not yield to anyone at this moment.

We Democrats have just saved the treaty, but we are not going to be in any longer tonight. I want Senators to think about this overnight.

I ask unanimous consent that following the prayer on tomorrow morning, the time of the two leaders be waived and that I be recognized for not to exceed 5 minutes, and that the vote on cloture be waived until I have yielded the floor at that time.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The minority leader.

Mr. DOLE. I do not have any intention to object, but I would like to

maybe speak for 3 minutes before we recess.

Mr. BYRD. Absolutely. Mr. President, I ask unanimous consent that the distinguished minority leader be recognized for whatever he wants; that I then be recognized for an additional 3 minutes and that the vote on cloture be suspended until I have yielded the floor.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. The Republican leader is recognized.

Mr. DOLE. Mr. President, let me first indicate this amendment has been around for some time—in fact, probably a week or 10 days. It was never a part of any discussion. In fact, earlier today when I was asked to identify the amendments, I made it a point to identify this one rather precisely and I must say no one said a word. It is an amendment that Senator Scoop Jackson had offered previously to another—I do not know which particular treaty it was but with a couple of word changes the amendment was adopted at that time.

I think what we have now is a difference of interpretation. It is not this Senator's intention, after having walked the plank as I promised I would do, in support of the amendment of the distinguished majority leader today, to try to sneak in later and undo that. I do not operate that way. This amendment has been, as I indicated, pending for some time. I think I can speak for my other colleagues who were cosponsors of this amendment, and have been for some time, who may have voted not to table the amendment. So I would not want the RECORD—and I am sure the majority leader did not intend that—to indicate we were not cooperating because we disagreed on a matter of interpretation. Where we have had an agreement we have cooperated in an effort to get this treaty, I must say, for our President. As I said here last week to some of my colleagues on this side, this is our President and it was our obligation and it was our burden in particular on this side not to do anything that might derail prospects for passage of the resolution of ratification.

We have had, as the majority leader has indicated, his full cooperation or we would not be here now. We have had the cooperation of Members on both sides. The Senate has demonstrated that the Founding Fathers were right in giving us a constitutional responsibility. We have made some appropriate changes because of the Senate, so I hope that we do not have a falling out over this difference of opinion.

The Senator from Georgia and the majority leader see it one way and a number of other well-intentioned Senators, who I think in nearly every case are going to vote for the resolution of ratification, see it another way.

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There is still the amendment of Senator WALLOP that is pending, two amendments by Senator PRESSLER, I think one or two that will be taken, and then there are two amendments that were filed, which would not be protected if cloture were invoked, by Senator SPECTER as part of the unanimous-consent agreement. So I would indicate to the majority leader that I believe we are fairly near the end. It might take 2 or 3 hours. And the majority leader is probably right, maybe if we come in tomorrow morning we can move right along.

I only rose to indicate to the majority leader that I believe we are cooperating, and I would not want the RECORD to in any way indicate that somehow we were at one point doing something and at another point trying to undo what we agreed to do earlier. So we are prepared to go on tonight.

All the amendments are on this side, so we have been hustling around all day trying to get Senators on this side to shorten the time they would take, and we believe we have a pretty good order and can probably complete action on all the other amendments in a couple of hours. I thank the majority leader.

Mr. BYRD. Mr. President, I thank the distinguished Republican leader, and I could not ask for better cooperation than the Republican leader has given.

As I said earlier, when I first saw this amendment, I thought it was a good amendment and I would vote for it. Then I saw those words "applicable international law," and I began to think about the effect of the amendment. On its face, it looks good and I can understand how Senators could vote for it. But I warned Senators earlier when I made the motion to table. Yet, Senators would not listen, and our friends across the aisle voted the party line.

Let me say this about the party, Mr. President. I have been privileged to be this party's leader now for 12 years, but there are some things more important to me than party. I have never yet read a party platform, and I do not ever intend to read a party platform.

I have stood up for my party as strongly as has anybody else in my party when appropriate and necessary, but there are some things I put ahead of my party. The vote to table should not have been a partisan matter.

I want to thank Senators HATFIELD, WEICKER, and STAFFORD for voting to table the amendment. We are not going to have any more votes tonight. There are one or two other amendments like this one still hanging around. I am going to let that cloture motion also hang around until tomorrow morning. And remember that if cloture is invoked there are 30 hours that can be utilized after that, and over a hundred amendments are at the desk. We have adopted an adjournment resolution that provides for adjournment either today, or Friday, or

Saturday. It does not allow the Senate to go over to Monday. The Senate will be out until the week after next. Think about it.

[Disturbance in the Cloakroom.]

Mr. President, my speech is already having some results. [Laughter.]

Mr. President, was the order entered that allows the majority leader to be recognized on tomorrow morning following the prayer?

The PRESIDING OFFICER. That was part of the agreed to unanimous-consent request.

Mr. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

Mr. WALLOP. Mr. President, will the Republican leader yield?

Mr. BYRD. Perhaps Senators ought to listen.

The PRESIDING OFFICER. The Senate will be in order.

Mr. BYRD. They will know how early the votes may occur tomorrow.

The PRESIDING OFFICER. The Senate will be in order.

THE INF TREATY

Mr. HEFLIN. Mr. President, on Monday, May 23, in a speech here on the floor of the U.S. Senate, I announced my intention to vote for the ratification of the INF Treaty and to reduce the potential of nuclear destruction of the world.

In my speech, while still having reservations, I briefly described the unprecedented verification provisions contained in the treaty, and intelligence capabilities with which we should be able to ensure Soviet compliance. Also, I briefly described reservations I have relative to the imbalance in conventional and chemical arms which exists between the Soviets and the NATO alliance, and the remaining deterrents to Soviet aggression in Europe. However, at this time, I would like to examine in more detail these matters, and then offer priorities which I believe the United States should adopt in the coming years to ensure further deterrence and guarantee our national security and that of our allies.

After two world wars, it is clear that the United States must do all that is necessary and proper to help defend and maintain Western European peace and security. Likewise, the defense of the United States is closely linked to the peace and stability of Europe. Any future outbreak of aggression in Europe would necessarily involve the United States.

It is very reassuring to know that all of the NATO alliance members support the INF Treaty and that the rules for verifying compliance have been resolved to the mutual satisfaction of the officials of the United States and the Soviet Union.

If the U.S. Senate fails to ratify this treaty now, I am afraid that we would send the wrong political signals to both NATO and the rest of the world. Granted there are some legitimate

problems with the treaty that should be addressed and accounted for immediately, yet, the overall treaty itself should be ratified.

Now, Mr. President, all these things considered, let me now turn to some of my concerns relative to the treaty.

On many occasions, the distinguished majority leader, Senator BYRD, stated that this treaty should be a good treaty for the United States. This INF Treaty would eliminate an entire class of nuclear weapons. However, if the treaty is not a good treaty for the United States as a whole, and would not increase the security of our NATO allies, we should not approve its ratification—no matter how historical and unprecedented it may be.

Mr. President, I must completely agree with the distinguished majority leader. We must ask ourselves, "Is this treaty good for the United States? Will the United States and NATO be more secure with the ratification of the INF Treaty, provided, of course, that the Soviets comply with it?"

Mr. President, I remain concerned over the Soviet's superiority in conventional forces and chemical weaponry, and I remain skeptical as to the treaty's verifiability.

The conventional superiority over NATO forces that the Warsaw Pact now currently enjoys is of great concern to me. Ratification of this treaty will make modernization of conventional forces in NATO countries more important than ever before. Our NATO commanders must have the ability to utilize a "flexible response" in the event of a Soviet conventional attack. Unless we substantially increase our efforts to modernize our conventional forces and substantially add to the actual numbers of those conventional forces, we will completely destroy the doctrine of "flexible response."

For decades, the Warsaw Pact has been building its conventional force levels, in terms of numbers, to the point that they could be insurmountable. If it were not for the technical advantage we and our NATO allies hold over the Soviets, the Warsaw Pact conventional superiority may well be insurmountable today. Now, through various means, not the least of which is espionage, the Warsaw Pact is rapidly gaining in technical breakthroughs in conventional weaponry. However, for now, Mr. President, I would like to simply deal with numbers.

In reviewing the report of the Armed Services Committee on the INF Treaty, I was interested in the supplemental views of our distinguished colleague from Arizona, Senator McCARN. In the report, the Senator from Arizona stated that in 1987, the Warsaw Pact had: One million servicemen as compared to 780,000 servicemen for NATO, a ratio of 1.3 to 1; 16,900 medium tanks to 6,500 for NATO, a 2.6 to 1 ratio; 22,000 armored personnel

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carriers and infantry fighting vehicles to 14,000 for NATO, a 1.57 to 1 ratio; 11,000 anti-tank guided missiles to 7,500 for NATO, a ratio of 1.47 to 1;

800 attack helicopters to only 500 for NATO, a ratio of 1.45 to 1; 1,100 multiple rocket launchers to 200 for NATO, a ratio of 5.5 to 1.

Mr. President, I could go on and on listing weapon systems in which the Warsaw Pact has a distinct advantage over NATO in conventional forces. In my judgment, this matter of the conventional imbalance between NATO and the Warsaw Pact must be addressed if we are to realize any type of significant arms control, and reduce the threat of war to our nation and our allies. I would have preferred that the President link, in some way, the conventional arms imbalance to the INF Treaty. While, the treaty does, in fact, address some conventional weapons—a mistake, in my judgment, in the case of conventionally armed ground-launched cruise missiles—it does not go far enough. It is my hope that the next administration will deal with this matter in a meaningful way.

As with conventional weapons, the Soviets have also slowly and methodically developed a tremendous stockpile of chemical weapons. Mr. President, for 18 years—from 1969 to 1987—the United States did not produce any chemical agents for use in weapon systems. During that time, our existing stockpile of chemical agents deteriorated to the point that its effectiveness and safety became questionable when operated by our servicemen.

Currently, the Soviets have a chemical war fighting capability far superior to that of the NATO alliance. The Soviets use modern chemical agents and protective systems as a major part of their conventional war fighting systems. This is Soviet doctrine.

Only last year did the United States again begin to produce chemical weapons, and this happened only after years of congressional debate. However, should they become available for deployment, neither of the binary chemical weapons of the United States, the 155-millimeter artillery shell nor the Bigeye chemical bomb, could be deployed in Europe during peace time. In addition, all existing unitary chemical weapons must be removed from West Germany by 1992.

Mr. President, it is my sincere hope that the matter of the chemical weapons imbalance between NATO and the Soviet Warsaw Pact will be a point of serious negotiations in Geneva. If this does not happen, the Soviets and the Warsaw Pact will hold the advantage in these horrid weapons for many years to come.

All this considered, let me now, Mr. President, turn to an issue which gives me the most concern relative to this treaty. This is the matter of verification.

There is no question that this treaty makes an unprecedented and historical step toward treaty verification pro-

cedures with the introduction of on-site inspection and the monitoring of each nation's activities. This is a breakthrough which cannot, and must not, be taken lightly. However, even with the advent of on-site inspection and monitoring, I have concerns relative to the actual verifiability of this treaty. What concerns me the most is the Soviets' past history of compliance with arms control treaties with the United States.

Mr. President, can we trust the Soviets? In my judgment, the answer is no, we cannot. The Soviets' past history with arms control treaties is outright deplorable. In that regard, the Soviets have never complied with an arms control treaty with the United States. Most recently, the President certified to Congress that the Soviets were, in fact, in violation of the 1972 ABM Treaty by constructing the Krasnoyarsk radar. This is only one of a great many of their arms control treaty violations.

However, we cannot overlook the fact that witnesses who appeared before the three Senate committees that were charged with reviewing this treaty testified that the treaty was effectively verifiable and that there was a high confidence that a militarily significant violation would be detected. I would certainly hope that all violations of the treaty would be detected and not simply those that have a military significance. Also, in private conversations with officials charged with ensuring the treaty's verification, I asked them point blankly: "Is this treaty verifiable?" While the answer would always be in the affirmative, voice, tone, inflection and expression repeatedly left me with some doubt.

I recall a recent news article in which an administration official who is a veteran of United States-Soviet arms control negotiations was quoted as saying, and I will only paraphrase here, that no agreement with the Soviet Union is finished until all of the papers are signed and sealed, and even then, it is usually not over. The truth is that the Soviets rarely live up to their agreements. Even with on-site inspections that take arms control verification further than ever before, we can never let down our guard. We should never forget that while glasnost is a very popular word these days, it is still a Soviet Communist world and the Communist doctrine of worldwide domination has not changed one bit. Mr. President, I am afraid that in their efforts to secure an arms control treaty before this President goes out of office, the administration may have acted too hastily and made mistakes which could easily lead to a situation of a decreased level of national security and a greater risk of war.

At any rate, Mr. President, again, we cannot ignore the consistent authoritative testimony by highly reputable administration officials that the treaty is effectively verifiable. Also, with our sophisticated intelligence capability

and with inspection rights outlined in the treaty, I believe we have an unprecedented capacity to catch the Russians if they cheat. Thus, we have come closer than ever before to having a cheat proof treaty.

In that regard, I do not intend to oppose the treaty. However, I would call on the administration to develop a better compliance and response policy so that in the event the Soviets do violate this treaty, the United States will not simply make idle protests, but will take action that will either bring the Soviets into compliance or the United States out of the bounds of the treaty itself.

Mr. President, all things considered, pros and cons, strengths and weaknesses, foreign policy and military strategy, in my judgment, the INF Treaty is a symbol of the strength and unity of the joint efforts of the United States and the NATO alliance. It represents the culmination of 9 years of implementing the landmark, historic duo-track strategy to proceed simultaneously with INF modernization and INF arms control.

As a result of this treaty, both the United States and the NATO alliance will enjoy restored public faith, as well as increase credibility in securing East-West peace. Also, as a result of this treaty, I believe we can safely say that we have reaffirmed the principles upon which NATO was founded 40 years ago.

Thank you, Mr. President.

RATIFICATION OF THE INF TREATY

Mr. RUDMAN. Mr. President, I rise today to support ratification of the INF Treaty. As a member of the Senate observer delegation at Geneva, I have carefully monitored the progress of the negotiations which produced the accord before us, and am mindful of the risks inherent in any such undertaking. Yet, after thoroughly reflecting on the treaty's substance and implications, I am satisfied that, on balance, it usefully serves U.S. and allied security interests.

To note the existence of some uncertainties, however, is not to devalue the strategic merits of the pact as a whole. It is, rather, to acknowledge reality and to dispel any illusion about what a single agreement can reasonably be expected to achieve within a complex strategic relationship. Superpower arms control is not an exercise in philanthropy. States with competing interests will enter into agreements limiting or, in this case, eliminating a portion of their military power only when they perceive strategic benefits in doing so.

Accordingly, no such agreement can be made absolutely foolproof or devoid of all risk. The challenge of prudent statecraft is to reduce those risks to minimal levels which can be managed effectively through calculated adjustment. It is critical, however, that we have reasonable confidence that the future force balance will not be revised

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to our disadvantage in a strategically meaningful manner. And ultimately, Mr. President, we need to inquire if the treaty advances the security objectives we sought when the negotiations commenced. On balance, I believe it does.

There can be little doubt that Moscow's introduction of the triple-warhead SS-20 missile in 1977 redefined the threat facing the Western alliance. The increased target coverage and additional options afforded Soviet military planners were the immediate tangible products of a dangerous disparity in "Eurostrategic" force deployments.

Even more ominous, perhaps, was the mobile SS-20's sinister potential to intimidate our European allies into making political concessions which would rend the fabric of NATO cohesion and decisively alter the continental power balance in Moscow's favor. The emerging strategic equation was frighteningly stark and chilling to contemplate.

As a result, in 1979, NATO, with the support of the United States, announced that it would deploy intermediate nuclear forces in Western Europe holding comparable Soviet targets at risk unless Moscow agreed to eliminate the SS-20's. In November 1981, President Reagan followed up on this by announcing the "zero option" dedicated to the total removal of the expanding SS-20 force and associated INF systems. This announcement, however, would surely have rung hollow in the absence of NATO's determination to take the concrete measures necessary to ensure its own security.

These two steps by NATO and the United States did not lead to any change in Soviet behavior so, in 1983, NATO decided to proceed with the deployment of Pershing II and ground launched cruise missiles in Europe. It is worth recalling how controversial this step was in the NATO countries. Efforts were made in Congress and in the parliaments of our allies to delay the deployment. Large public demonstrations were held in opposition to this step, notably in Great Britain and West Germany. The Soviet Union attempted to fan the concerns of those westerners fearful of the NATO decision by first threatening, and then actually walking out of all arms control negotiations.

Allied steadfastness in the face of withering pressure to make unilateral concessions which would have perpetuated a Soviet advantage in modern INF systems, was vital to achieving the agreement we now consider. The summit declaration of NATO leaders in Brussels earlier this year stressed that the INF Treaty was—

... the impressive result of the political courage, the realism, and the unity of the members of the Alliance. The Treaty's provisions on stringent verification and asymmetrical reductions provide useful precedents for future agreements.

One is compelled to ask whether alternative strategies embracing options such as the once-touted "nuclear freeze" would have proven equally adroit. What strategic merit would have accrued from freezing in place a destabilizing imbalance in INF systems? To pose the question is, I believe, to answer it.

Yet in pursuing an equitable agreement, we did not fall victim to our often distressing tendency of negotiating with ourselves to mollify Soviet objections to stated positions. Consider, for example, that in advancing the zero option, we withstood the following, ultimately abandoned, Soviet responses:

That the initial proposal was totally unacceptable;

That the deployment of United States INF forces would terminate all arms control negotiations, bluster unmatched by reality despite a temporary suspension of the talks at Soviet behest in 1983;

That any putative agreement must cover British and French nuclear forces;

That the talks must include other intermediate-range U.S. nuclear delivery systems, such as forward-based bombers;

That any INF accord must be linked to an agreement which precludes strategic defenses; and finally,

That Moscow be permitted to retain 100 INF missiles in Soviet Asia.

Moreover, as recently as 1984, congressional critics and some leading academicians were predicting a dire crisis in United States-Soviet relations if we proceeded with the Pershing II and ground-launched cruise missile deployments instead of making preemptive concessions. Had we succumbed to domestic and foreign blandishments on this score, does anyone seriously believe we would now be on the threshold of removing the INF threat? I think not.

What does the INF Treaty do? It is noteworthy that the elimination on a global basis of an entire class of missiles systems will derive from markedly asymmetrical starting points that favor Moscow.

In the long-range INF category, the Soviets would give up 441 SS-20 and 112 SS-4 missiles, with an aggregate of 1,435 warheads. The United States, by contrast, would remove from Europe 108 Pershing II, 256 ground-launched cruise missiles and 72 obsolescent Pershing 1A missiles, all single-warhead systems carrying a combined 436 warheads. With respect to short-range INF systems, Moscow would yield 110 single-warhead SS-12/22 and 20 SS-23 missiles. The United States has no comparable systems in this category. As such, by ultimately removing Soviet weapons of choice for preemptive attacks against key NATO military assets and support areas at the outset of a conflict, the treaty enhances the alliance's deterrent capability against potential aggression.

It is, of course, well to recall that effective deterrence is largely a product of multiple uncertainties. While Moscow retains various options for providing target coverage to compensate for removal of the SS-20, the United States is hardly without alternative means for holding selected Soviet targets at risk. In addition, continuing upgrades to allied defensive systems provide increasing capability against the kind of threat which weapons, not covered by the pact, might plausibly pose. Beyond the sustained modernization of Western conventional forces, anticipated improvements to tactical nuclear assets will also enhance the credibility of NATO deterrence against an invasion by numerically superior Warsaw Pact units. The cumulative result of measured force improvements should still make the costs of contemplated aggression outweigh any conceivable benefits.

No agreement of military and political value is ultimately acceptable if compliance with its legal terms cannot be equitably and effectively verified by the signatories. It is here, Mr. President, that the most gnawing uncertainties associated with the treaty admittedly reside. Moscow's record of less than full compliance with previous arms control accords has been amply documented by the Reagan administration. Worrisome differences remain, within the intelligence community, over estimates about the actual number of SS-20 missiles produced. We cannot discount the possibility that some SS-20 systems may be covertly stockpiled and evade detection under the verification procedures established.

To be sure, verification is an inexact science, with much depending on judgments made on the basis of often ambiguous and inconclusive data. And it is precisely on these counts, that a pact eliminating, as opposed to merely limiting, a given class of weapons, becomes a boon to verifiability. Once the period of phased removal of systems subject to the treaty has ended, any activity related to that system would be deemed a violation. A militarily significant infraction, such as missile construction or flight testing to assess reliability, could be detected with reasonable confidence by "national technical means" of verification. And the prospect of Moscow's brandishing covertly deployed systems of uncertain reliability for political intimidation, does not seem overly credible.

I would note, that the treaty incorporates unprecedented successive layers of inspection procedures to facilitate verification which transcend the prior exclusive reliance on national technical means. These involve comprehensive onsite inspections, including continuous monitoring of specific installations where missiles, launchers, and related support structures subject to treaty provisions are, or have been, located.

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The designated inspection sites in the Soviet Union result from more than merely accepting Moscow's certification of its missile production, assembly and deployment complexes. The initial data base, which will undergo continuous revision, has been confirmed independently by U.S. intelligence-gathering systems.

Rigorous exercise of agreed inspection rights and prompt inquiry into questionable activities are essential to a healthy verification process. Under this treaty, the means for the United States to do so, exist.

The paramount question then becomes whether sufficient disincentives to noncompliance exist within the treaty to minimize the incidence of possible violations, and provide reasonable confidence that any infractions which may occur are not of a magnitude to alter the prevailing force balance to our disadvantage.

I am confident the answer to both these questions is yes.

Yet far beyond the terms of the accord itself lies an only vaguely appreciated strategic phenomenon. A new era is dawning, where the foundations of NATO theater deterrence subtly shift from principal reliance on nuclear weapons to increased emphasis on conventional forces. Sustained efforts to accommodate this reality are necessary. They must be accompanied by creative operational thinking to guide the development of doctrine and tactical employment concepts. This will, quite candidly, take money. Nobody should be under the illusion that this treaty will lessen our national defense obligations or efforts.

In this regard, I should take a moment and address the concern raised by some that the proposed INF Treaty will lead to a dangerous conventional force imbalance in Europe. First, the United States did not put intermediate nuclear weapons in Europe to address a conventional imbalance; those weapons were deployed to address a strategic threat which is being removed. Had Soviet INF missiles not been deployed, we would, today, be in the situation the INF Treaty is designed to produce. Second, the United States has spent the last 8 years, and tremendous amounts of money, for the express purpose of upgrading our conventional forces to redress that imbalance. While more remains to be done, this effort led by President Reagan, has had substantial effect. The solution to the remaining conventional imbalance is to continue upgrading United States and NATO forces. It is not to reject a treaty which eliminates destabilizing nuclear weapons.

Mr. President, history may not soon forgive us if we fail now to advance our security interests by ratifying the treaty. Manageable risk is an inescapable aspect of any worthwhile enterprise.

As we seek to further stabilize the strategic order, let us not waver in our resolve to conclude a START agree-

ment which reflects the realistic precedents of the INF Treaty. Let no one ever question our constancy of purpose in taking whatever measures are required to meet challenges to our interests in a forthright manner. But finally, Mr. President, let no one ever accuse us of having lacked the vision to recognize our interests by irresponsibly rejecting agreements designed to contain threats to these interests.

INF TREATY RATIFICATION

Mr. ROCKEFELLER. Mr. President, in its consideration of the Intermediate-Range Nuclear Force [INF] Treaty, the Senate is fulfilling a solemn and historic mandate of shared treaty-making powers between the Executive and the Senate. The extensive hearings conducted by the Foreign Relations, Armed Services and Intelligence Committees bear witness both to the importance of this treaty and to the Senate's constitutional role in treaty-making. Today I rise in support of affirmative Senate advice and consent and passage of the resolution of ratification.

The INF Treaty, related protocols and memorandum of understanding, signed in Washington on December 8, 1987, by President Reagan and General Secretary Gorbachev, represents a unique and momentous achievement. For the first time since the dawn of the nuclear age, the two nuclear superpowers have agreed to destroy some of their newest and most capable nuclear delivery systems. Whereas previous agreements, such as SALT I, simply placed aggregate constraints on the two sides which required them to dismantle obsolete nuclear systems as newer models were deployed, the INF Treaty mandates the complete destruction of all United States and Soviet ground-based medium- and short-range cruise and ballistic missiles. Soon after entry into force, the INF Treaty will require both superpowers to engage in a dramatic spectacle: the destruction, by launching or burning, and crushing of thousands of modern nuclear delivery systems.

Another novel element of this treaty is the fact that the Soviet Union has agreed to asymmetrical reductions to reach equal limits. Over the next 3 years, the Soviet Union will destroy 1,752 INF missiles, while the United States will destroy 859 INF missiles in order to eliminate all medium- and short-range INF worldwide. The principle of asymmetrical cuts has an important bearing on future negotiations with the Soviet Union on conventional forces and chemical arms—two areas in which the Soviet Union maintains clear numerical superiority of deployed forces—as well as the ongoing Geneva talks on strategic force reductions.

A third unique element of the INF Treaty is the new ground it breaks in the ability to verify compliance. As with previous nuclear accords, nation-

al technical means will be heavily relied upon to verify adherence to treaty provisions. But the INF Treaty also contains long-sought-after intrusive monitoring provisions—provisions which the United States has promulgated in various manifestations, and which the Soviets have consistently rejected ever since the Baruch plan. Both sides will have the right under this treaty to conduct onsite inspections to verify the baseline from which reductions will occur, to conduct short-notice inspections, and to continue to monitor production facilities for a full decade after the INF systems are destroyed.

A fourth precedent worthy of mention is the high degree of involvement of America's Pacific partners in deliberations on the INF negotiations. For the first time in nuclear arms control, Japan, Korea, Australia, and other Asian nations were regularly consulted and took active interest in the evolution of negotiating positions. Of obvious concern to our Asian allies was the fear that we might agree to reductions in the European theater while ignoring ongoing SS-20 deployments in Soviet Asia. The final outcome was, of course, a global ban on INF systems—thereby protecting equally the security interests of our European and Asian allies. Under this treaty, 262 Soviet INF missiles capable of carrying 581 warheads will be eliminated from the Asian theater, due in no small measure to the active role played by our allies in the region.

In addition to these important precedents, Mr. President, the INF Treaty is widely seen as vindication of NATO's solidarity in adhering to the 1979 "dual track" decision to deploy Pershing II's and ground-launched cruise missiles [GLCM's] while simultaneously seeking to negotiate limits on that class of armament. Credit is due here not only to the conservative governments of President Reagan, Prime Minister Thatcher and Chancellor Kohl—but also to their democratic and social democratic predecessors who formulated the NATO decision in 1979: President Carter, Chancellor Schmidt, and Prime Minister Callaghan.

Mr. President, the treaty now before the Senate primarily affects nuclear systems which are deployed with or aimed at our allies in Europe and Asia. As I mentioned earlier, I believe that this treaty breaks important new ground in nuclear arms control—but it only affects a very small fraction of nuclear systems at the disposal of the United States and the Soviet Union. And none of the systems to be destroyed under this treaty are capable of striking the United States. The most direct impact of this treaty is the effect it will have on America's alliances.

For NATO, the ratification of the INF Treaty marks a watershed in the politics of alliance nuclear policy. For

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the past decade, the alliance has been engaged in a prolonged debate among defense experts and in the streets of London, Bonn, and Amsterdam concerning the role of nuclear weapons in NATO security. What has emerged is a political victory for NATO—but a qualified one. The INF Treaty has eased European anxieties about East-West confrontation, but has left in its wake considerable confusion and uncertainty about the future direction of NATO defense doctrine.

Part of this confusion stems from the somewhat unconventional approach of the Reagan administration toward strategic nuclear doctrine and NATO's agreed policy of "flexible response". From the "zero option", to star wars, to Reykjavik, the Reagan administration has mounted what seems to be an unintentional attack on the underlying precepts of Western nuclear strategy. The case study in the INF context is the way in which the "zero option" emerged—and how the U.S. arms control proposal for complete elimination of INF contradicted the rationale for the 1979 dual track decision.

Contrary to the prevailing wisdom, the primary rationale for the 1979 NATO decision was not the deployment of the Soviet SS-20, but the perceived need to bolster NATO's long-range nuclear deterrent in light of strategic parity. SALT II codified the strategic equivalence of the two superpowers and resurfaced old doubts about whether the United States would sacrifice Chicago for Paris. The growing obsolescence of existing nuclear systems (such as the U.K.-based FB-111's), along with fears that the United States might agree in SALT II to ban the transfer of cruise missile technology to Europe, caused considerable concern among European defense analysts about the credibility of America's nuclear commitment to the defense of a conventionally inferior Western Europe. These concerns were highlighted in a oft-quoted speech by Chancellor Helmut Schmidt at the London-based Institute for Strategic Studies in 1977. Soviet deployment of the SS-20 follow-on to the SS-4 and SS-5 intermediate-range missiles was one of the concerns expressed by Schmidt in 1978—but certainly not the primary one.

The North Atlantic Council's decision in December 1979 to deploy 108 Pershing II's and 464 GLCM's in five European countries was essentially the most recent of many alliance responses to the erosion of American nuclear superiority: the introduction of theater nuclear systems in the 1950's, the proposal for a multilateral force in the early 1960's, the creation of the high level group for nuclear policy consultation, the assignment of Poseidon nuclear warheads to SACEUR, and the adoption of NATO's doctrine of flexible response in 1969. That doctrine rejected the notion of massive retaliation in favor of a graduated spec-

trum of retaliatory options to deter Soviet adventurism—including the use of theater nuclear weapons, or, as they are now known, INF. The 1979 decision emphasized in particular the need to deploy a limited number of American weapons in Europe capable of striking Soviet territory in order to strengthen the credibility of extended deterrence.

The change of administrations in Washington in 1981 brought with it a marked increase in bellicose rhetoric toward the Soviet Union—rhetoric which served to fan European anxieties about basing additional United States nuclear weapons. As public opposition to the deployment of Pershing II's and GLCM's in West Germany, Belgium, Holland, Britain, and Italy began to grow, governments increasingly cast the rationale for those deployments in terms of countering Soviet SS-20's rather than the more arcane justification of bolstering the means to implement NATO's doctrine of flexible response.

It was in the context of growing European opposition to new INF deployments that the Reagan administration agreed in November 1981 to embrace the zero option—the United States would forgo planned deployments of INF if the Soviets would dismantle the over 200 already deployed SS-20's, SS-4's and SS-5's. This proposal was first adumbrated by the leftwing of the German Social Democratic Party and later embraced by the Reagan administration as a means of allaying European concerns that Washington had little interest in pursuing the arms control track of the "dual track" decision. But it was obvious to all involved that the "zero option" was nonnegotiable at the time—and if accepted would have undermined the rationale for the 1979 decision. NATO's INF were deemed important for the coherence of NATO's own nuclear strategy—not because of Soviet INF modernization.

Five years after the Reagan administration proposed the zero option, a new Soviet leader called the President's bluff at the Iceland summit. What had been put forward in 1981 as a public relations exercise now had become a fait accompli; there was no way for political leaders in Europe or America to renege on the zero option offer. American nuclear weapons based in Europe capable of striking the Soviet Union were to be banned in perpetuity in exchange for deeper cuts in redundant Soviet systems. In a very sense, the zero option means zero for the West—but not for the Soviets who can easily retarget longer range missiles on targets previously covered by the SS-20.

Mr. President, I have engaged in this historical review of the dual track decision not to argue against the treaty, but to indicate that in my view this treaty does not represent the most carefully considered, coherent approach to Western security interests.

It is instead the result of having been trapped by this administration's cavalier approach to arms control in its first term. By pursuing arms control as a public relations exercise, we have ended up with a treaty which eliminates the one category of weapons we should retain in Western Europe while perversely increasing our reliance on those we should be eliminating—short-range nuclear systems.

Despite these shortcomings, Mr. President, I believe that the INF Treaty deserves the support of the Senate this week. Perhaps the single most important reason for supporting this treaty is not its military implications, but its likely political ramifications for East-West and West-West relations. The potentially historic changes underway in the Soviet Union may allow us to make lasting progress in stabilizing the military competition between our two countries. This treaty, which breaks so much new ground in superpower arms control, holds out the possibility of fundamentally transforming East-West relations. As so many witnesses critical of the INF's Treaty had pointed out in their testimony—whatever conceptual faults the treaty may have, it would be an enormous political mistake for the United States now to abandon it, in terms of allied reaction as well as United States-Soviet relations.

The importance of the INF Treaty is primarily political, after all. The United States will still retain over 4,500 nuclear weapons and 325,000 troops in Europe capable of deterring Warsaw Pact aggression. The Soviet Union, absent any strategic arms restraints, will be capable of striking the entire range of targets covered by the SS-20's by simply retargeting strategic arms at shorter distances. The military missions previously assigned to INF missiles will be able to perform in other ways. The political legacy of the INF Treaty, on the other hand, is potentially of enormous significance. It promises to pave the way for genuinely historic nuclear strategic agreements with the Soviet Union. And it portends a basic turning point in the Atlantic Alliance and a maturation of America's security relations with its Asian allies.

The breakthroughs achieved in the INF negotiations—which, it should be noted, cover only less than 4 percent of the nuclear arsenals of the superpowers—make agreement with the Soviet Union on the vastly more complex strategic issues much more likely. The precedents of asymmetrical reductions, onsite and intrusive monitoring, and actual reductions of nuclear systems hold out great hope for the strategic and space talks. It will be imperative, however, that we approach these ongoing negotiations with a clearer sense of what it is that we hope to achieve beyond the superficially appealing allure of numerical reductions. And the inevitable reality is that for